

## ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

**Jaime Abraham**, Note, *Divorce Mediation—Limiting the Profession to Family/Matrimonial Lawyers*, 10 CARDOZO J. CONFLICT RESOL. 241 (2008). Concluding that divorce mediations should be conducted by family/matrimonial lawyers, this article discusses the issues surrounding divorce mediation that require a specific type of mediator.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{149} QUALITY CONTROL

**Harold Abramson**, *Crossing Borders into New Ethical Territory: Ethical Challenges When Mediating Cross-Culturally*, 49 S. TEX. L. REV. 921 (2008).

Mediators sometimes resist carrying out the wishes of the parties involved within mediation. When a mediator tries to exert influence over the will of parties within an international mediation, it is called “cultural imperialism.” This article discusses how a mediator can ethically bridge such mediator-party gaps.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT’L

{124} COMPARISONS: CROSS-CULTURAL

{138} ETHICS: GENERAL

**Jamie R. Adams**, *Using ADR Principles to Resolve Environmental Disputes: How Mediated Settlements Have Helped Struggling CERCLA Survive*, 8 PEPP. DISP. RESOL. L. J. 331 (2008).

This article investigates the relationship between the Comprehensive Environmental Clean-Up and Liability Act (CERCLA) and ADR. It explains that ADR principles are important for resolving CERCLA disputes because they allow for faster settlements with more favorable terms to the parties. It provides examples of CERCLA sites that were cleaned up as a result of mediated settlements and the exercise of ADR principles. Finally, the article discusses how mediated settlements are helping to fund remediation and reduce costs.

{21} MEDIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{128} REQUIREMENTS: STATUTORY OR RULES

{144} LEGISLATION

**Arby Aiwanian**, Note, *Transformative Mediation: Empowering the Oppressed Voices of a Multicultural City to Foster Strong Democracy*, 11 SCHOLAR 31 (2008).

This article examines the crossroads of mediation and democracy. It explains how “transformative mediation” can be used in contexts not typically associated with formal mediation and how this process can lead to a more democratic society.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{136} ECONOMIC ADVANTAGES OF ADR

**James J. Alfini**, *Mediation as a Calling: Addressing the Disconnect Between Mediation Ethics and the Practices of Lawyer Mediators*, 49 S. TEX. L. REV. 829 (2008).

The purpose of this article is to outline the problem of “the apparent disconnect between mediation’s core values” and the “predominant practices of lawyer mediators.” To do this, the article examines the Model Standard of Conduct for Mediators and The Association for Conflict Resolution.

{21} MEDIATION—GENERAL

{99} SUBJ MATTER: OTHER PROF MALPRACTICE

{138} ETHICS: GENERAL

{151} ROLE OF LAWYERS

**Roger P. Alford**, *The Nobel Effect: Nobel Peace Prize Laureates as International Norm Entrepreneurs*, 49 VA. J. INT’L L. 61 (2008).

This article discusses how Nobel Peace Prize Laureates have played a dominant role in shaping modern international law. It traces the different periods of international law with significant discussion of international arbitration.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{92} SUBJ MATTER: INT’L

{125} COMPARISONS: HISTORICAL

**Arthur J. Anderson**, *Zoning and Land Use*, 61 SMU L. REV. 1205 (2008).

The second part of the article, entitled “Annexation,” discusses the right of landowners to trigger arbitration within the context of an involuntary annexation.

{44} ARBITRATION—GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

**S. Willoughby Anderson**, Comment, *The Past on Trial: Birmingham, the Bombing, and Restorative Justice*, 96 CAL. L. REV. 471 (2008).

This comment applies “restorative justice” principles to the Sixteenth Street Baptist Church Bombing by examining its application in other countries and applying these techniques to help heal communities affected by racial violence.

{60} ADR—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{77} SUBJ MATTER: COMMUNITY

{124} COMPARISONS: CROSS-CULTURAL

**Jane Andrewartha**, *English Maritime Law Update: 2007*, 39 J. MAR. L. & COM. 389 (2008).

The author notes the escalation in mediation among English courts in settling commercial matters in 2007. The article claims that this increase in use of mediation reflects a growing importance of mediation within global commercial disputes. Additionally, the article posits that English courts also may be shifting away from the traditional practice of minimizing arbitration appeals as reflected by the high amount of developments in English maritime law in 2007 coming from appeals of arbitrated decisions.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{136} ECONOMIC ADVANTAGES OF ADR

**Armand H. Matheny Antommara**, *How Can I Give Her IV Antibiotics at Home When I Have Three Other Children to Care for?: Using Dispute System Design to Address Patient Provider Conflicts in Health Care*, 29 HAMLINE J. PUB. L. & POL’Y 273 (2008).

In attempting to identify principles that should govern the resolution of patient provider conflicts, the author believes it is important to reflect on the types of conflicts envisioned. Unfortunately, little empirical data is available regarding the frequency and types of patient provider conflicts. This essay argues that more frequent, less dramatic cases should not be neglected. The article uses examples of both dramatic and mundane disputes to identify some of the characteristics of patient provider conflicts and argues that shared characteristics between these disputes make it possible to apply the general principles of dispute resolution system design to health care.

{60} ADR—GENERAL

{89} SUBJ MATTER: HOSPITALS

{138} ETHICS: GENERAL

{134} DISPUTE PREVENTION

**Rory Bahadur**, *Constitutional History, Federal Arbitration and Seamen's Rights Sinking in a Sea of Sweatshop Labor*, 39 J. MAR. L. & COM. 157 (2008).

The author examines federal appellate court decisions holding that the maritime claims of foreign seamen may be removed from state court to federal court if they qualify for federal arbitration. The author argues that, not only does this interpretation remove foreign seamen from the international law of nations, but also removes them from the protections of traditional American maritime law and is contrary to Supreme Court precedent.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Stephen A. Bailey & O. Russell Murray**, *Ethics in Negotiation and Mediation for the Florida Attorney*, 82 FLA. B. J. 10 (2008).

This article supplies an overview of how attorneys should perform their duties as lawyer-negotiators and lawyer-mediators. The authors focus on the duties of an attorney to follow the rules of professional conduct as they advise their clients of possible negotiation and mediation techniques. Overall, the article seeks to outline the fundamental obligations of an attorney participating in ADR.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{114} 3D PARTY: PRACTICE OF LAW

{138} ETHICS: GENERAL

**Thomas Barfield**, *Culture and Custom in Nation-Building: Law in Afghanistan*, 60 ME. L. REV. 347 (2008).

Afghanistan's legal system is composed of legal codes, religious law, and customary law—all which are mutually exclusive. The article discusses how non-written, local community rules are used to handle disputes within the context of the Afghani legal system.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**John Barkai**, *Cultural Dimension Interests, the Dance of Negotiation, and Weather Forecasting: A Perspective on Cross-Cultural Negotiation and Dispute Resolution*, 8 PEPP. DISP. RESOL. L.J. 403 (2008).

This article examines the difference between American negotiation techniques and negotiation strategies of other cultures. The article also

demonstrates how different negotiation techniques can be used effectively together.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

**John Barkai**, *What's a Cross-Cultural Mediator to Do? A Low-Context Solution for a High-Context Problem*, 10 CARDOZO J. CONFLICT RESOL. 43 (2008).

This article addresses problems facing practitioners in cross-cultural mediation. Author claims that the issue is growing and will be affecting more of the ADR community. Focus on mediation with Asian parties in commercial disputes.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{124} COMPARISONS: CROSS-CULTURAL

**Linda Baron**, *Disaster Basics: The Life Cycle of a Disaster and the Role of Conflict Resolution Professionals*, 9 CARDOZO J. CONFLICT RESOL. 301 (2008).

The author explains how ADR has been useful in disaster relief and proposes ways in which ADR can be of further help for both pre-disaster and post-disaster situations.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

**Amy Beasley**, Comment, *The Road Not Often Taken: Alternative Dispute Resolution for Common Interest Communities in North Carolina*, 30 CAMPBELL L. REV. 315 (2008).

This comment argues the need for alternative dispute resolution to resolve common interest community disputes under the Planned Community Act of North Carolina. The first section specifically addresses the merits of ADR in the setting of common interest communities.

{44} ARBITRATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{144} LEGISLATION

**Michael Bekesha**, Note, *Rejecting the Intertwining Doctrine: Favoring ADR While Hindering Judicial Efficiency and Economy: Ingold v. AIMCO/Bluffs, LLC. Apartments*, 2008 J. DISP. RESOL. 293 (2008).

In *Ingold v. AIMCO*, the Colorado Supreme Court rejected the intertwining doctrine with respect to arbitration clauses that do not include all potential

claims. This note discusses whether the Colorado Supreme Court acted prudently in rejecting the intertwining doctrine in these types of cases.

{44} ARBITRATION—GENERAL

{90} SUBJ MATTER: RENTAL HOUSING

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Sandra S. Benson**, *Feature Story: Does Our Agent Have the Power?: Extending the Power of Agents to Bind Principals to Arbitration*, 44 TENN. B.J. 19 (2008).

The article discusses scope of power and unsettled issues with respect to pre-injury arbitrations in health care, particularly in nursing home admission contracts. The article addresses which law (state or federal) should govern such arbitration and if agents, with only oral authorization, may bind their principal to arbitration.

{44} ARBITRATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Phyllis E. Bernard**, *Minorities, Mediation and Method: The View from One Court-Connected Mediation Program*, 35 FORDHAM URB. L.J. 1 (2008).

The author argues it is time to reconsider the critiques of Critical Race Theorists regarding how minority groups are affected when participating in mediations.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Elizabeth F. Beyer**, Comment, *A Pragmatic Look at Mediation and Collaborative Law as Alternative to Family Law Litigation*, 40 ST. MARY'S L.J. 303 (2008).

This comment discusses the general problems with litigating family law issues and describes how mediation and collaborative law are preferable alternatives to resolving family law disputes.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Ljiljana Biukovic**, *Dispute Resolution Mechanisms and Regional Trade Agreements: South American and Caribbean Modalities*, 14 U.C. DAVIS J. INT'L L. & POL'Y 255 (2008).

This article looks at regional trade disputes and discusses four different regional trade agreements as possible methods of resolution. The article also discusses arbitration, mediation, and negotiation within the context of supranational dispute resolution mechanisms.

{60} ADR—GENERAL  
 {92} SUBJ MATTER: INT'L  
 {124} COMPARISONS: CROSS-CULTURAL

**Jonathan G. Blattmachr**, *Reducing Estate and Trust Litigation Through Disclosure, in Terrorem Clauses, Mediation and Arbitration*, 9 CARDOZO J. CONFLICT RESOL. 237 (2008).

This article addresses the problems associated with litigation involving the administration of trusts and estates. The author argues for six ways litigation can be reduced, including via the use of state-enforced, mandatory mediation or arbitration. The article also includes a sample ADR provision.

{21} MEDIATION—GENERAL  
 {101} SUBJ MATTER: PROBATE  
 {127} REQUIREMENTS: MANDATE TO USE  
 {128} REQUIREMENTS: STATUTORY OR RULES

**Rachel M. Bowe**, Comment, *The Scope of Arbitration Clauses in Collective Bargaining Agreements & the Superficial Divide: Clarifying the Circuit Confusion*, 31 HAMLINE L. REV. 233 (2008).

This comment argues that the circuit court split regarding the scope of arbitration clauses in collective bargaining agreements (CBAs) should be resolved by consistent and correct application of the collateral test. It then discusses the purposes and policies of relevant federal labor laws, the rules of contract interpretation as applied to CBAs (and the arbitration clauses contained within them), and explains the divide among the circuit courts as to the proper interpretation of such arbitration clauses.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL  
 {93} SUBJ MATTER: LABOR—GENERAL  
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Linda R. Boyle**, Note, *Three's Company: Examining the Third-Party Problem Through an Analysis of Bidas S.A.P.I.C. v. Government of Turkmenistan*, 45 HOUS. L. REV. 261 (2008).

This article examines the problems associated with binding non-signatory parties to international arbitration agreements and proposes enabling arbitrators to resolve these issues through jurisdictional decisions. It analyzes this third-party problem in the context of *Bidas S.A.P.I.C. v. Government of Turkmenistan* (Fifth Cir.) and argues that the court exacerbated the third-party problem in international arbitration. The article also addresses the problems created for U.S. courts when government instrumentalities are involved in international arbitrations.

{44} ARBITRATION—GENERAL  
{92} SUBJ MATTER: INT'L  
{114} 3D PARTY: PRACTICE OF LAW  
{121} SETTLEMENT: AUTHORITY

**Wayne D. Brazil**, *Thoughts About Spiritual Fatigue: Sustaining Our Energy by Staying Centered*, 2008 J. DISP. RESOL. 411 (2008).

This article describes what spiritual fatigue is and how it relates to mediators. It also suggests ways for mediators to overcome spiritual fatigue.

{21} MEDIATION—GENERAL  
{73} SUBJ MATTER: GENERAL

**Christopher Brinson**, Comment, *The Potential Positive Impact of the Ethical Lawyer-Legislator on American Legislative Politics*, 32 J. LEGAL PROF. 273 (2008).

This comment examines the “unethical nature” of American legislators, as observed by the American public. The author argues that the same moral foundation that students gain in legal education should be employed by lawyer-legislators within the public sphere. The author cites dispute resolution as an integral aspect of the ethical training in legal education. Furthermore, the article posits that expertise in dispute resolution should produce ethical lawyer-legislators.

{60} ADR—GENERAL  
{73} SUBJ MATTER: GENERAL  
{138} ETHICS: GENERAL  
{144} LEGISLATION

**John Bronsteen et al.**, *Hedonic Adaptation and the Settlement of Civil Lawsuits*, 108 COLUM. L. REV. 1516 (2008).

Research on hedonic adaptation is applied to the settlement of civil lawsuits. According to hedonic psychology, a plaintiff in a personal injury suit will overestimate damages but as time passes and hedonic adaptation occurs, will become more willing to settle.

{1} NEGOTIATION—GENERAL  
{110} SUBJ MATTER: TORTS—OTHER  
{123} SETTLEMENT: PRESSURES TO SETTLE

**Charles H. Brower II**, *The Functions and Limits of Arbitration and Judicial Settlement Under Private and Public International Law*, 18 DUKE J. COMP. & INT'L L. 259 (2008).

Though there has been a shift from litigation to arbitration in international commercial disputes, there has also been a shift toward judicial settlement in



those disputes. This article explores arbitration initially and then examines dispute resolution in public and private international law. The author then explains the shift to judicial settlement and the reasons why this method has not been adopted in resolving other international disputes.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{121} SETTLEMENT: AUTHORITY

**Joseph R. Brubaker**, *The Judge Who Knew Too Much: Issue Conflicts in International Adjudication*, 26 BERKELEY J. INT'L L. 111 (2008).

This article argues that the impartiality of an adjudicator assigned to multiple disputes in international arbitration may be, or may appear to be, affected if issues in the disputes are similar. The article reviews impartiality standards within international adjudication and arbitration. It concludes by arguing that three factors need to be taken into account when determining impartiality: the proximity of commitment; the depth of involvement; and the timing of the opinion.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{149} QUALITY CONTROL

**Aaron-Andrew Bruhl**, *The Unconscionability Game: Strategic Judging and the Evolution of Federal Arbitration Law*, 83 N.Y.U. L. REV. 1420 (2008).

The author uses recent changes in arbitration agreements to illustrate how strategic dynamics drive doctrinal change. The author begins by looking at how the Supreme Court's pro-arbitration directives have transformed the FAA. Next, the author examines how lower courts insulate their decisions from unfavorable review by ideologically adverse reviewing courts. Finally, the author looks at how recent decisions have altered the balance of power between state and federal courts as well as courts and arbitrators.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

{127} REQUIREMENTS: MANDATE TO USE

**Edward Brunet & Jennifer J. Johnson**, *Substantive Fairness in Securities Arbitration*, 76 U. CIN. L. REV. 459 (2008).

This article discusses how securities arbitration needs procedures that apply substantive legal principles in order to achieve fairness. The article also asserts that present-day securities arbitration only applies substantive law sporadically and inconsistently.

{44} ARBITRATION—GENERAL  
{106} SUBJ MATTER: SECURITIES  
{133} COURT REFORMS

**Mark E. Budnitz**, *The Federalization and Privatization of Public Consumer Protection Law in the United States: Their Effect on Litigation and Enforcement*, 24 GA. ST. U.L. REV. 663 (2008).

The consumer protection laws discussed in this article involve consumer sales, payment, and credit transactions. The article begins by describing several of the major federal and state statutes that govern the consumer marketplace. The author then discusses the privatization of consumer law, primarily through mandatory pre-dispute arbitration.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL  
{79} SUBJ MATTER: CONSUMER  
{147} POWER IMBALANCE

**Willaim W. Burke-White & Andreas von Staden**, *Investment Protection in Extraordinary Times: The Interpretation and Application of Non-Precluded Measures Provisions in Bilateral Investment Treaties*, 48 VA. J. INT'L L. 307 (2008).

Many bilateral investment treaties, designed to protect foreign investors from crises, such as terrorist attacks or natural disasters, contain non-precluded measures clauses. These clauses transfer risk, associated with state action in response to disasters, from the foreign country to the investor. This article provides a framework for the interpretation of such clauses. In so doing, the article discusses international investment arbitration as a tool for determining how much deference should be accorded to state policies by ad hoc arbitral tribunals.

{44} ARBITRATION—GENERAL  
{92} SUBJ MATTER: INT'L  
{126} REQUIREMENTS: CONTRACTUAL CLAUSES  
{124} COMPARISONS: CROSS-CULTURAL

**Lynn P. Burleson**, *Statutory Guide: Family Law Arbitration: Third Party Alternative Dispute Resolution*, 30 CAMPBELL L. REV. 297 (2008).

Burleson's article details why arbitration is well suited to family law. The guide provides a general overview of arbitration. The author then delves into the specifics of arbitration in the context of family law and specifically the North Carolina Family Law Arbitration Act, which she compares to General Commercial Arbitration Statutes.

- {44} ARBITRATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {114} 3D PARTY: PRACTICE OF LAW

**Sarah Burns**, *Thinking About Fairness & Achieving Balance in Mediation*, 35 FORDHAM URB. L.J. 39 (2008).

This article reviews how five fundamental aspects of thinking systematically contribute to biases within mediations and discusses how awareness of this might aid mediators in improving fairness and balance in mediations.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {155} TEACHING
- {151} ROLE OF LAWYERS

**Paul Caprara**, Comment, *Surf's Up: The Implications of Tort Liability in the Unregulated Sport of Surfing*, 44 CAL. W. INT'L L.J. 557 (2008).

This article examines and advocates the application of ADR to surfer liability accidents.

- {60} ADR—GENERAL
- {77} SUBJ MATTER: COMMUNITY
- {110} SUBJ MATTER: TORTS—OTHER
- {134} DISPUTE PREVENTION

**Thomas E. Carbonneau**, *Commercial Peace and Political Competition in the Crosshairs of International Arbitration*, 18 DUKE J. COMP. & INT'L L. 311 (2008).

Arbitration has been a very successful dispute resolution mechanism in international commercial disputes, but it is ineffectual in resolving disputes between states. The article explains that in mixed situations, the more commercial the dispute, the more likely that arbitration will be successful. The article posits, however, that arbitration of a commercial dispute within the context of an unstable political environment will be difficult to achieve.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {75} SUBJ MATTER: COMMERCIAL
- {147} POWER IMBALANCE

**Thomas E. Carbonneau**, *The Revolution in Law Through Arbitration*, 56 CLEV. ST. L. REV. 233 (2008).

The article explores how arbitration has revolutionized the practice of law. The author looks at the development of a strong federal policy favoring arbitration and how this affects American law.

- {44} ARBITRATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {121} SETTLEMENT: AUTHORITY
- {146} ORGANIZATION POLICIES & RULES

**Enrique R. Carrasco & Alison K. Guernsey**, *The World Bank's Inspection Panel: Promoting True Accountability Through Arbitration*, 41 CORNELL INT'L L.J. 577 (2008).

This article discusses the failure of the World Bank's Inspection Panel in assuring accountability and adherence to lending rules. The article proposes an arbitration process to resolve community claims against the Bank for noncompliance with its own policies and procedures.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {146} ORGANIZATION POLICIES & RULES

**Maria Elena Guerra Cerron**, *Seventh Annual Conference on Legal & Policy Issues In the Americas: Article: Justices of the Peace in Peru: An Efficient Justice Service*, 20 FLA. J. INT'L L. 65 (2008).

In Peru, Justices of the Peace provide an inexpensive and viable option for dispute resolution. The process is inexpensive and efficient. Even without funds from the state, this system has provided Peru's citizenry with a viable option for dispute resolution

- {60} ADR—GENERAL
- {92} SUBJ MATTER: INT'L
- {124} COMPARISONS: CROSS-CULTURAL

**Eric Chafetz**, *Looking into a Crystal Ball: Courts' Inevitable Refusal to Enforce Parties' Contracts to Expand Judicial Review of Non-Domestic Arbitral Awards*, 9 PEPP. DISP. RESOL. L.J. 63 (2008).

This article explores how courts will treat parties' attempts to contract for expanded judicial review in arbitration agreements.

- {44} ARBITRATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {128} REQUIREMENTS: STATUTORY OR RULES
- {144} LEGISLATION

**Gary Chan Kok Yew**, *Access to Justice for the Poor: The Singapore Judiciary at Work*, 17 PAC. RIM L. & POL'Y J. 595 (2008).

Court-based mediation programs have increased access to justice for poorer litigants in Singapore, although there is concern about the programs' abilities to remove or reduce the negative influences that can force unfavorable

settlements. Informational asymmetry, financial inequality, and power inequality can all have an adverse impact on settlement if not properly controlled and countered.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{147} POWER IMBALANCE

**Gino Cheng**, Note, *Doubling Up the Horses in Midstream: Enhancing U.S. Patent Dispute Resolution by the PTO's Adoption of the JPO's Hantei Request System*, 9 CARDOZO J. CONFLICT RESOL. 489 (2008).

This note addresses the difficulties associated with patent dispute resolution. The author advocates adoption of the Japanese Hantei Request Procedure as a solution to current patent dispute resolution.

{44} ARBITRATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{124} COMPARISONS: CROSS-CULTURAL

**Madeline Chimento**, Comment, *Lost Artifacts of the Incas: Cultural Property and the Reparation Movement*, 54 LOY. L. REV. 209 (2008).

This comment proposes that demands for reparation of art, artifacts, and cultural property should be addressed by negotiation or binding arbitration, without focusing on cultural nationalism or internationalism.

{1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Bernali Choudhury**, *Recapturing Public Power: Is Investment Arbitration's Engagement of the Public Interest Contributing to the Democratic Deficit?*, 41 VAND. J. TRANSNAT'L L. 775 (2008).

This article argues that international investment treaties that contain arbitration clauses have given arbitrators an expanded role in making public interest decisions. This article addresses concerns with investment arbitration's curtailment of democratic expression through its ability to counter a state's sovereign decision-making authority. The author argues that the lack of public participation limits the efficacy of these public interest decisions and suggests ways to increase public participation.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{92} SUBJ MATTER: INT'L

**James R. Coben**, *An Intentional Conversation About Conflict Resolution in Health Care*, 29 HAMLINE J. PUB. L. & POL'Y 211 (2008).

Health care decisions are influenced by different and competing value systems. The result is an overwhelmingly complex set of challenges. This article specifically focuses on how health care professionals and conflict resolvers can work together to identify essential guiding principles for addressing conflicts across the health care field.

{60} ADR—GENERAL

{89} SUBJ MATTER: HOSPITALS

{134} DISPUTE PREVENTION

**Amy Cohen**, *Negotiation, Meet New Governance: Interests, Skills, and Selves*, 33 LAW & SOC. INQUIRY 503 (2008).

To date, there has not been much interaction between negotiation literature and new governance literature. This article asserts that these two fields could benefit from a sharing of techniques, innovations, and normative arguments.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{146} ORGANIZATION POLICIES & RULES

{155} TEACHING

**Deborah S. Coldwell et al.**, *Franchise Law*, 61 SMU L. REV. 845 (2008).

This article discusses whether or not a franchise or license agreement contains a jury waiver provision when it stipulates that the parties agree to arbitrate in lieu of litigating disputes before a court. The article discusses how arbitration and jury waiver provisions are analyzed together.

{44} ARBITRATION—GENERAL

{144} LEGISLATION

**Robert J. Condlin**, *"Every Day and in Every Way We Are All Becoming Meta and Meta," or How Communitarian Bargaining Theory Conquered the World (of Bargaining Theory)*, 23 OHIO ST. J. ON DISP. RESOL. 231 (2008).

Although proponents of communitarian legal bargaining have criticized adversarial bargaining for being too belligerent, polarizing, and wasteful, they have done so in a manner that, at the meta argument level, embraces the adversarial and aggressive tactics that they condemn in a negotiation setting. Instead of replacing adversarial methods, communitarian theorists have inadvertently refined them.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

**Jaimee Conley**, Note, *Suing for Small Potatoes: Consumer Class Action Waivers in Arbitration Agreements Distinguished by the Ninth Circuit: Shroyer v. New Cingular Wireless Services, Inc.*, 2008 J. DISP. RESOL. 309 (2008).

In *Shroyer v. New Cingular Wireless Services, Inc.*, the Ninth Circuit held that class arbitration waivers were unconscionable and that consumers could not be compelled to arbitrate disputes. This note addresses the significance of the Ninth Circuit's decision and the policy arguments supporting such an approach.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{138} ETHICS: GENERAL

**Laura J. Cooper**, *Privatizing Labor Law: Neutrality/Card Check Agreements and the Role of the Arbitrator*, 83 IND. L.J. 1589 (2008).

This symposium lecture addresses neutrality and card checks in labor law and the challenges of the arbitrator's role in administering these agreements.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

**Denise Cortes**, Note, *Union Power Redefined: How Arbitrating Claims, Including Title VII, Benefits Racial Minority Union Workers*, 9 RUTGERS RACE & L. REV. 443 (2008).

This note argues that unions are better off when they arbitrate claims, especially for racial minorities. Specifically, the note uses case developments to show why minority union workers benefit from having unions arbitrate claims, including Title VII claims.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{146} ORGANIZATION POLICIES & RULES

{147} POWER IMBALANCE

**Russell D. Covey**, *Fixed Justice: Reforming Plea Bargaining with Plea-Based Ceilings*, 82 TUL. L. REV. 1237 (2008).

The author advocates using a fixed discount system for plea bargaining in America in combination with plea-based ceilings. He discusses benefits of this approach and what would make reform possible. Ceilings limit the sentences, and a fixed discount system "discounts" the mandatory sentence in exchange for a guilty plea.

{60} ADR—GENERAL

{82} SUBJ MATTER: CRIMINAL

## {133} COURT REFORMS

**Mariana Hernández Crespo**, *A Systemic Perspective of ADR in Latin America: Enhancing the Shadow of the Law Through Citizen Participation*, 10 CARDOZO J. CONFLICT RESOL. 91 (2008).

This article discusses the need for legal reform in Latin America, and the possibility for ADR mechanisms to assist in that process by providing a way for citizens to feel engaged in the dispute resolution process.

{60} ADR—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{124} COMPARISONS: CROSS-CULTURAL

{133} COURT REFORMS

**Amina Dammann**, *Vacating Arbitration Awards for Mistakes of Fact*, 27 REV. LITIG. 441 (2008).

This article examines situations where a defeated party seeks to vacate an arbitration award due to mistake of fact. It compares and contrasts various international systems for reviewing arbitration awards.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{124} COMPARISONS: CROSS-CULTURAL

**Dorothy J. Della Noce et al.**, *Signposts and Crossroads: A Model for Live Action Mediator Assessment*, 23 OHIO ST. J. ON DISP. RESOL. 197 (2008).

The Signposts and Crossroads model provides a means of assessing a mediator's competency during a live mediation. The model is designed particularly for transformative mediation programs where videotaped assessment is not possible or practical. Signposts are functional categories indicating particular happenings in the conversation; crossroads indicate points where the mediator had to decide the best option from among the available options to move the mediation forward.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

{155} TEACHING

**Edward B. Diskant**, Note, *Comparative Corporate Criminal Liability: Exploring the Uniquely American Doctrine Through Comparative Criminal Procedure*, 118 YALE L.J. 126 (2008).

The article compares the German and American system for criminal procedure. Specifically, it focuses on the advantages that American



prosecutors have over German prosecutors, including the greater freedom to negotiate plea bargains. It also discusses some of the effects of that freedom to negotiate.

{1} NEGOTIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{124} COMPARISONS: CROSS-CULTURAL

**Robert W. DiUbaldo**, *Evolving Issues in Reinsurance Disputes: The Power of Arbitrators*, 35 FORDHAM URB. L.J. 83 (2008).

This article examines emerging areas of the law governing certain procedural powers of arbitrators that have impacted and will continue to impact reinsurance arbitrations, as well as other commercial disputes.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{91} SUBJ MATTER: INSURANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Paul W. Dobson & Roman Inderst**, *The Waterbed Effect: Where Buying and Selling Power Come Together*, 2008 WIS. L. REV. 331 (2008).

This article concerns the effect of differential buying power on consumers called the waterbed effect. The waterbed effect occurs when more powerful buyers are able to acquire better supply terms within negotiations and, as a result, cause a worsening of supply terms for smaller buyers in similar negotiations.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{147} POWER IMBALANCE

**Christopher R. Drahozal**, *Arbitration Costs and Forum Accessibility: Empirical Evidence*, 41 U. MICH. J.L. REFORM 813 (2008).

Drahozal examines the effect of arbitration and litigation costs on forum accessibility in the consumer/employment context. He concludes that, in many cases, the upfront costs of arbitration are equal to, or greater than, those in litigation. He also concludes that small and mid-sized claims make arbitration a more accessible forum. The larger the claim, the less certain it is that arbitration remains an accessible forum.

{{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{93} SUBJ MATTER: LABOR—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Christopher R. Drahozal**, *Busting Arbitration Myths*, 56 U. KAN. L. REV. 663 (2008).

This article analyzes and discusses many commonly held beliefs about arbitration and whether or not they are true.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{73} SUBJ MATTER: GENERAL

**Ryan R. Dryer**, Comment, *Beyond the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and Their Effect on Competition*, 2008 J. DISP. RESOL. 267 (2008).

This comment examines the history of the three most prominent leagues in U.S. professional sports: the Collective Bargaining Agreements (CBAs) that govern the employer-employee relationship in each league, the provisions of those CBAs that influence player contracts and contract disputes, the perceptions about competition that have resulted from CBA governance of the leagues, and possible solutions to problems that exist within those leagues.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{125} COMPARISONS: HISTORICAL

**Emily C. Dubansky**, *Koshko v. Haining: Does A Heightened Standard for Grandparent Visitation Really Protect Children's Best Interests?*, 67 MD. L. REV. 805 (2008).

Under *Koshko v. Haining*, the court held that when seeking visitation rights, grandparents must show unfitness of the parents. This article argues that requiring mandatory mediation in all third party visitation cases would protect parental rights while reducing children's exposure to harmful litigation.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{127} REQUIREMENTS: MANDATE TO USE

**X. Brian Edwards**, Note, *True Donative Freedom: Using Mediation to Resolve the Disparate Impact Current Succession Law Has on Committed Same-Gender Loving Couples*, 23 OHIO ST. J. ON DISP. RESOL. 715 (2008).

Mediation offers a mechanism by which same-gender couples can protect their established estate plans from probate challenges and preserve donative intent. Specifically, mediation can help ensure testamentary plans are not successfully challenged in probate, and mediation can help minimize potential problems between the surviving partner and surviving blood relations.

{21} MEDIATION—GENERAL  
 {101} SUBJ MATTER: PROBATE  
 {134} DISPUTE PREVENTION

**Theodore Eisenberg et al.**, *Arbitration's Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts*, 41 U. MICH. J.L. REFORM 871 (2008).

This article engages in a study of the use of arbitration clauses in consumer and non-consumer contracts and finds that over three quarters of the studied companies' consumer agreements included mandatory arbitration clauses while less than 10% of non-consumer contracts included such clauses. Regarding this disparity, the article hypothesizes that mandatory arbitration clauses are intended to preclude aggregate dispute resolution by remitting the consumer to an individual action.

{44} ARBITRATION—GENERAL  
 {79} SUBJ MATTER: CONSUMER  
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES  
 {127} REQUIREMENTS: MANDATE TO USE

**Zachary Elkins et al.**, *Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960—2000*, 2008 U. ILL. L. REV. 265 (2008).

The author discusses bilateral investment treaties and their expansion from 1960 to 2000. Particularly, the author explains the expansion and rise of these investment treaties with respect to the fact that they are an alternative source of confidence and protection for foreign investors.

{60} ADR—GENERAL  
 {92} SUBJ MATTER: INT'L  
 {136} ECONOMIC ADVANTAGES OF ADR

**Robert E. Emery & Kimberly C. Emery**, *Should Courts or Parents Make Child-Rearing Decisions?: Married Parents as a Paradigm for Parents Who Live Apart*, 43 WAKE FOREST L. REV. 365 (2008).

This article argues that courts generally should not interfere in the disputes of separated parents because courts generally refuse to interfere with the disputes of married parents. It encourages the use of ADR to resolve such disputes and urges that courts treat separated parents as they treat married parents.

{60} ADR—GENERAL  
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)  
 {133} COURT REFORMS

**Susan Nauss Exon**, *The Effects that Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation*, 42 U.S.F. L. REV. 577 (2008).

This article examines the current meaning of mediation and how the legal obligations imposed on a mediator should affect the mediator's style. It also examines the impartiality requirements on a mediator.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

{149} QUALITY CONTROL

**Christopher M. Fairman**, *Growing Pains: Changes in Collaborative Law and the Challenge of Legal Ethics*, 30 CAMPBELL L. REV. 237 (2008).

Professor Fairman's article addresses the tension between collaborative law and legal ethics. The article focuses on three events in 2007 that have put the ethics of collaborative law at the forefront of the discipline. The first section tracks the development of ADR. The second section analyzes Colorado Ethics Opinion 115, the Uniform Collaborative Law Act, and ABA Formal Law Opinion 07-447. Fairman concludes with a prognosis for collaborative law.

{53} COLLABORATIVE LAW—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

**Eldon E. Fallon et al.**, *Bellwether Trials in Multidistrict Litigation*, 82 TUL. L. REV. 2323 (2008).

Multidistrict, Bellwether cases are expensive but can be useful in working out details of complicated situations. Specifically, this is true if attorneys use this pretrial mechanism to decide whether to go forward or settle the case.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{151} ROLE OF LAWYERS

**Brian J. Farrar**, Note, *To Legislate or to Arbitrate: An Analysis of U.S. Foreign Investment Policy After FINSA and the Benefits of International Arbitration*, 7 J. INT'L BUS. & L. 167 (2008).

This note argues for the establishment of an international arbitral body to resolve foreign investment disputes involving national security. The author specifically argues that such a system would more effectively balance the commercial needs of foreign investors with the national security needs of sovereign nations than the current system employed by the U.S. under the Foreign Investment and National Security Act of 2007 (FINSA).

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {92} SUBJ MATTER: INT'L
- {136} ECONOMIC ADVANTAGES OF ADR

**Barbara Glesner Fines**, Note, *Ethical Issues in Collaborative Lawyering*, 21 J. AM. ACAD. MATRIM. LAW. 141 (2008).

This article catalogues some of the ethical issues that have been raised in collaborative law. It then examines competence issues in considering collaborative law practice. The article also examines limited scope representation agreements entered into between attorney and client.

- {53} COLLABORATIVE LAW—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {138} ETHICS: GENERAL

**David A. Fitzgerald II**, Note, *Saving Alternative Dispute Resolution in Patent Law: Countering the Effects of the Patent Troll Revolution*, 23 OHIO ST. J. ON DISP. RESOL. 345 (2008).

There is an excellent opportunity to promote and increase the use of ADR mechanism in the field of patent law as a means of reducing litigation between patent trolls and manufacturers. Possible ways of increasing the frequency of ADR mechanisms include increasing general awareness of ADR techniques, utilizing legislative and administrative options, and taking an active voice in the patent reform movement.

- {60} ADR—GENERAL
- {105} SUBJ MATTER: SCIENCE & TECHNOLOGY
- {136} ECONOMIC ADVANTAGES OF ADR
- {127} REQUIREMENTS: MANDATE TO USE

**Janice M. Fleischer**, *One Size Does Not Fit All: Differentiating ADR Processes*, 49 S. TEX. L. REV. 1039 (2008).

This article presents a deconstructionist view of ADR and its connotations. It gives particular focus to the way mediation has become synonymous with ADR.

- {60} ADR—GENERAL
- {73} SUBJ MATTER: GENERAL
- {136} ECONOMIC ADVANTAGES OF ADR
- {151} ROLE OF LAWYERS

**Miranda Fleschert**, *Elevator Company Goes Down; Mandatory Arbitration Provisions as Applied to Pending Civil Rights Claims in the Employment Context*, 2008 J. DISP. RESOL. 571 (2008).

This article discusses the need for greater protections for employees in mandatory arbitration contracts within the context of civil rights disputes with employers.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{147} POWER IMBALANCE

**Daniel Forman**, Note, *Improving Asylum-Seeker Credibility Determinations: Introducing Appropriate Dispute Resolution Techniques into the Process*, 16 CARDOZO J. INT'L & COMP. L. 207 (2008).

This note addresses the problems associated with asylum hearings, particularly with defensive applications that are offered to an immigration court where a credibility determination is made. Credibility determinations are fraught with errors, inconsistencies and lack of fairness. The author argues how and why ADR techniques would better suited for asylum credibility determinations.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

**Stephen E. Friedman**, *Protecting Consumers from Arbitration Provisions in Cyberspace, The Federal Arbitration Act & E-Sign Notwithstanding*, 57 CATH. U.L. REV. 377 (2008).

This article discusses the effect of the FAA and E-SIGN on state regulation of arbitration provisions in consumer-internet transactions.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{144} LEGISLATION

**Sarah Gabraith**, *Second Life Strife: A Proposal for Resolution of In-World Fashion*, 2008 B.C. INTELL. PROP. & TECH. F. 090803 (2008).

The increase in use of the internet is something that has brought attention to the need for On-Line Dispute Resolution. This article looks at the Fashion Dispute Resolution system as a springboard for guidance in mediation that would make the dispute resolution procedure more efficient.

{21} MEDIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{123} SETTLEMENT: PRESSURES TO SETTLE

{128} REQUIREMENTS: STATUTORY OR RULES

**Stephen F. Gates**, *Ten Essential Elements of an Effective Dispute Resolution Program*, 8 PEPP. DISP. RESOL. L.J. 397 (2008).

This article explains how and why organizations that face numerous disputes should implement ADR programs. It focuses on business perspective, and how to systematically manage disputes for optimal early resolution.

{60} ADR—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{136} ECONOMIC ADVANTAGES OF ADR

**Philippe Gilliéron**, *From Face-to-Face to Screen-to-Screen: Real Hope or True Fallacy?*, 23 OHIO ST. J. ON DISP. RESOL. 301 (2008).

This article deals with the growing field of Online Dispute Resolution (ODR). The article presents a review of legal scholarship and its analysis of ODR, including ODR's advantages and disadvantages. Additionally, it analyses data on how the dispute resolution setting—face to face or online—impacts the participants' perception of the other party and overall process, and how these perceptions influence outcomes.

{60} ADR—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{149} QUALITY CONTROL

**Aaron S. Glass**, *2007 Annual Survey: Recent Developments in Sports Law*, 18 MARQ. SPORTS L. REV. 341 (2008).

This survey provides a summary of the more important and interesting sports cases that occurred in 2007. The survey has a section dedicated to alternative dispute resolution and how courts have dealt with agreements that include arbitration settlements. It also discusses the Court of Arbitration for Sports as a faster mechanism to resolve disputes than traditional litigation.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

**Jeffrey P. Gleason**, Comment, *From Russia with Love: The Legal Repercussions of the Recruitment and Contracting of Foreign Players in the National Hockey League*, 56 BUFF. L. REV. 599 (2008).

This comment discusses the issues of the NHL's negotiation of contracts with Russian players and the resulting antitrust and international lawsuits between the two countries.

{1} NEGOTIATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{146} ORGANIZATION POLICIES & RULES

**Jonathan B. Goldberg**, *Player Mobility in Professional Sports: From the Reserve System to Free Agency*, 15 SPORTS LAW. J. 21 (2008).

This article discusses case law that crafted an exemption to federal antitrust law and triggered the rise of sports unionization. The catalyst for the reserve system's collapse was the integration of the arbitration clause planted by a players' association into a Collective Bargaining Agreement. The article focuses on the fall of the reserve system and the rise of free agency, a system designed to facilitate contract offers to players from competing teams.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Jim Golden et al.**, *The Negotiation Counsel Model: An Empathetic Model for Settling Catastrophic Personal Injury Cases*, 13 HARV. NEGOT. L. REV. 211 (2008).

This article advocates use of the Negotiation Counsel Model to settle catastrophic personal injury cases. Using the trucking industry as an example, the authors discuss the many benefits of the negotiation counsel model, including saving time and money by increasing the chances of an early reasonable settlement.

{1} NEGOTIATION—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{136} ECONOMIC ADVANTAGES OF ADR

**Judith Goldstein & Richard H. Steinberg**, *Negotiate or Litigate? Effects of the WTO Judicial Delegation on U.S. Trade Politics*, 71 LAW & CONTEMP. PROB. 257 (2008).

This article looks at the judicial law-making process in the World Trade Organization (WTO) and the dispute-settlement decisions invoked. Overall, the article examines dispute resolution in the WTO.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

**Manuel A. Gomez**, *All in the Family: The Influence of Social Networks in Dispute Processing (A Case Study of a Developing Economy)*, 36 GA. J. INT'L & COMP. L. 291 (2008).

This article describes the influence of social networks on how individuals choose to process their legal disputes. The objective is to explain how social connections shape the ways in which conflict is processed within formal institutions. Using the social context in which the Venezuelan business sector operates as a framework, the article tries to draw a real life picture of how



dispute processing occurs in society, which is important to a more general understanding of how different systems of social control can function.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**David Graff**, Note, *The Helmsley Case: An Illustration of the Confused State of the Law Surrounding the Manifest Disregard of Law Doctrine as Applied to Arbitration*, 24 TOURO L. REV. 119 (2008).

There is much confusion surrounding the application of the manifest disregard of law doctrine with regard to arbitral awards. This note argues that either Supreme Court or legislative intervention is necessary to resolve this confusion.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{133} COURT REFORMS

**Jill I. Gross**, McMahon Turns Twenty: *The Regulation of Fairness in Securities Arbitration*, 76 U. CIN. L. REV. 493 (2008).

This article explores various sources of law, including the FAA, which could require fairness in securities arbitration. It also discusses SEC oversight of securities arbitration within the last ten years.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{128} REQUIREMENTS: STATUTORY OR RULES

{146} ORGANIZATION POLICIES & RULES

**Jill I. Gross & Barbara Black**, *When Perception Changes Reality: An Empirical Study of Investors' Views of the Fairness of Securities Arbitration*, 2008 J. DISP. RESOL. 349 (2008).

This article argues that although the process of arbitration in securities contracts has procedural safeguards for fairness, due to the perception of bias by the investors and their lack of faith in the arbitration process, reforms are needed.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{106} SUBJ MATTER: SECURITIES

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{144} LEGISLATION

**Jonathan D. Grossberg**, Note, *The Magnuson-Moss Warranty Act, the Federal Arbitration Act, and the Future of Consumer Protection*, 93 CORNELL L. REV. 659 (2008).

This article examines the tension between the Magnuson-Moss Warranty Act (MMWA) and the Federal Arbitration Act (FAA). Part I of this note provides background information on MMWA and FAA, as well as the *Chevron* doctrine of agency deference and the *McMahon* doctrine favoring arbitration. Part II examines the tensions between the conflicting statutes and doctrines, arguing the *McMahon* test should be applied before the *Chevron* test and that Congress intended to preclude binding arbitration. Part III argues that for any remaining questions regarding MMWA, *Chevron* deference should be given to the FTC interpretation of the MMWA. Part IV applies *Chevron* to the MMWA regulations and demonstrates that FTC interpretation should be given deference under both prongs. The note concludes by arguing that MMWA precludes binding arbitration, read in light of both *Chevron* and *McMahon*.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{127} REQUIREMENTS: MANDATE TO USE

{128} REQUIREMENTS: STATUTORY OR RULES

**Jason Gubi**, Note, *The Olympic Binding Arbitration Clause and the Court of Arbitration for Sports: An Analysis of Due Process Concerns*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 997 (2008).

Gubi discusses the importance of using methods of alternative dispute resolution, such as binding arbitration, for sports-related issues arising in an international setting. Focusing specifically on international non-governmental organizations, such as the Olympic movement, Gubi identifies the necessity of binding arbitration to resolve disputes quickly and economically. The article provides an overview of the International Olympic Committee and its dispute resolution structure.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{127} REQUIREMENTS: MANDATE TO USE

{128} REQUIREMENTS: STATUTORY OR RULES

**Drew M. Gulley**, Note, *The Enhanced Arbitration Appeal Amendment: A Proposal to Save American Jurisprudence from Arbitration, Modeled on the English Arbitration Act of 1996*, 36 HOFSTRA L. REV. 1095 (2008).

The article advocates reformation of arbitration award review by comparing arbitration in the United States to the arbitration procedures used in England. Specifically, the article identifies the shortfalls created in the American

arbitration system. It discusses potential arguments for and against the Enhanced Arbitration Appellate Amendment proposal.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{124} COMPARISONS: CROSS-CULTURAL

{144} LEGISLATION

**Aaron Halegua**, *Getting Paid: Processing the Labor Disputes of China's Migrant Workers*, 26 BERKELEY J. INT'L L. 254 (2008).

This article argues that informal mediation is the most effective form of dispute resolution for migrant workers claiming unpaid wages. It compares litigation and mediation in China and concludes with potential models for reforming China's labor dispute resolution system.

{21} MEDIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{136} ECONOMIC ADVANTAGES OF ADR

**Haitham A. Haloush**, *Internet Infrastructure and Online Alternative Dispute Resolution*, 25 J. MARSHALL J. COMPUTER & INFO. L. 217 (2008).

This article addresses online alternative dispute resolution (ODR) and explains why the internet, as a medium to conduct ADR in the form of OADR, can be utilized to efficiently resolve such disputes and result in a major boost to electronic commerce.

{60} ADR—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{136} ECONOMIC ADVANTAGES OF ADR

**Martha Halvordson**, *Employment Arbitration: A Close Look*, 64 J. MO. B. 174 (2008).

This article examines the problems associated with resolving workplace disputes. It also discusses legal developments which have made mandatory arbitration a viable option, and the benefits of arbitration for both employers and employees.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Robert B. Hamilton**, *When an Arbitration Ruling Must be Overturned: The Commonwealth Court's Proper Application of the "Essence Test" in Slippery Rock v. APSCUF*, 17 WIDENER L.J. 505 (2008).

The author examines the Pennsylvania Commonwealth Court's decision in *Slippery Rock v. APSCUF* and approves the court's rejection of the

arbitrator's decision under the "essence test" doctrine. The "essence test," which requires an arbitrator's decision to logically flow from the CBA, is an appropriate standard of review for courts in determining whether the arbitrator adhered to the terms of the collective bargaining agreement.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Andrew P. Hanson**, *The Trend Toward Principled Negotiation in Major League Baseball Collective Bargaining*, 15 SPORTS LAW. J. 221 (2008).

Collective bargaining in baseball has always been fraught with tension. The article posits that older collective bargaining agreements have forced the parties to adopt new negotiating strategies and styles. These new policies of negotiating closely resemble an approach to negotiating espoused by Roger Fisher and William Ury called "Principled Negotiation."

{1} NEGOTIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{123} SETTLEMENT: PRESSURES TO SETTLE

{134} DISPUTE PREVENTION

**Kenyon D. Harbison**, *Are Contingent-Fee Attorneys Deterred? How Courts Can More Effectively Police Adhesive Arbitration Agreements*, 7 APPALACHIAN J.L. 207 (2008).

This article argues that courts have misused some tools of contract law and have failed to utilize others, like statutory vindication, and that courts should use access and exculpation concerns to refuse to compel arbitration in some employee and consumer contracts. The article discusses the Federal Arbitration Act and how arbitration agreements are formed. The article then critiques how courts have analyzed arbitration contracts and how they might improve their analysis.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{127} REQUIREMENTS: MANDATE TO USE

**Seth D. Harris**, *Disabilities Accommodations, Transaction Costs, and Mediation: Evidence from the EEOC's Mediation Program*, 13 HARV. NEGOT. L. REV. 1 (2008).

The author argues that mediation should succeed in disabilities accommodation negotiations at the same rate it succeeds in other types of negotiations. The author maintains that, with respect to respondents, the

mediator's challenge may be to de-bias the respondents' initial view of the accommodation request.

{21} MEDIATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

{144} LEGISLATION

**Daniel R. Higginbotham**, *Buyer Beware: Why the Class Arbitration Waiver Clause Presents a Gloomy Future for Consumers*, 58 DUKE L.J. 103 (2008).

The article argues that class arbitration waivers that prohibit consumers from aggregating their claims are harsh and unfair. It furthermore argues that legislation as a means of addressing the problem would be ineffectual. The conclusion proposes alternative solutions to the problem of unfair class waivers.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{144} LEGISLATION

**Jay L. Hoecker**, *Guess Who is Not Coming to Dinner: Where Are the Physicians at the Healthcare Mediation Table?*, 29 HAMLINE J. PUB. L. & POL'Y 249 (2008).

This essay discusses who is "at the table" in designing a system of standards and principles to guide resolution of healthcare conflicts. Particularly, the focus of this essay is on physician providers and whether physicians need to be present, why physicians are under-represented, and what can be done to bring them to the table.

{21} MEDIATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{147} POWER IMBALANCE

**David A. Hoffman**, *Colliding Worlds of Dispute Resolution: Towards a Unified Field Theory of ADR*, 2008 J. DISP. RESOL. 11 (2008).

This article advocates a unified field theory of ADR by examining the common elements of areas of dispute resolution. The author also describes tensions in the ADR field. The article further describes both the blurring of boundaries that has occurred in the ADR field and the increasing hybridization of processes within the ADR field.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{146} ORGANIZATION POLICIES & RULES

**Rebecca Hollander-Blumoff & Tom R. Tyler**, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 LAW & SOC. INQUIRY 473 (2008).

This article presents the results of two studies that address whether procedural justice affects acceptance of negotiated agreements. The studies suggest that disputes are better resolved when lawyers treat their adversaries fairly and pay attention to issues of fairness of process in negotiation.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

{151} ROLE OF LAWYERS

**Carole S. Houk & Lauren M. Edelstein**, *Beyond Apology to Early Non-Judicial Resolution: The MedicOm Program as a Patient Safety-Focused Alternative to Malpractice Litigation*, 29 HAMLINE J. PUB. L. & POL'Y 411 (2008).

The costs of pursuing and defending medical malpractice actions are phenomenal. This article discusses how a Medical Ombuds/Mediator program (MedicOm) offers a system redesign for changing the way that medical malpractice actions and appeals are handled. The program can contribute to a much needed “safety system” with flexibility and informality to modify its procedures and practices in order to address the specific needs of a given case.

{60} ADR—GENERAL

{89} SUBJ MATTER: HOSPITALS

{134} DISPUTE PREVENTION

{149} QUALITY CONTROL

**Natalie Hrubos**, Note, *Agreements to Arbitrate Employment Discrimination Claims: Pyett Illustrates Need to Re-forest the Legal Landscape*, 18 TEMP. POL. & CIV. RTS. L. REV. 281 (2008).

This Note argues that *Pyett* should have found arbitration agreements to be enforceable, regardless of the union or non-union status of the employee. It also argues that employees should be informed when making choices regarding arbitration clauses, and that such clauses should be used as conditions of employment.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{147} POWER IMBALANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Richard W. Hulbert**, *Some Thoughts on Judgments, Reciprocity, and the Seeming Paradox of International Commercial Arbitration*, 29 U. PA. J. INT'L L. 641 (2008).

The article explores the international enforceability of judgments, in particular the enforceability of arbitral awards in the international setting. The article focuses on the idea of reciprocity in international enforcement of decisions. The article also discusses the potential of American courts limiting recognition of foreign decisions to countries that also recognize American decisions.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{144} LEGISLATION

**Becky L. Jacobs**, *Looking Forward: The Next Sixty Years of Clinical Legal Education: A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools*, 75 TENN. L. REV. 343 (2008).

This article discusses the overlap between clinical programs and dispute resolution programs at law schools.

{60} ADR—GENERAL

{83} SUBJ MATTER: EDUCATION

{155} TEACHING

**Becky L. Jacobs**, *Teaching and Learning Negotiation in a Stimulated Environment*, 18 WIDENER L.J. 91 (2008).

This article discusses the process of teaching negotiation courses in law school through experiential learning

{1} NEGOTIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{155} TEACHING

**Kevin T. Jacobs & Matthew G. Paulson**, *The Convergence of Renewed Nationalization, Rising Commodities, and "Americanization" in International Arbitration and the Need for More Rigorous Legal and Procedural Defenses*, 43 TEX. INT'L L.J. 359 (2008).

In recent decades, trends have developed in international arbitration which challenge arbitration's ability to be timely and cost-effective. International arbitration must address these challenges in order to remain an efficient method of dispute resolution.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

## {133} COURT REFORMS

**Nana Japaridze**, Note, *Fair Enough? Reconciling the Pursuit of Fairness and Justice with Preserving the Nature of International Commercial Arbitration*, 36 HOFSTRA L. REV. 1415 (2008).

This note examines the different characteristics of international commercial arbitration and argues that a quest for fairness and justice should not sacrifice other advantages of international arbitration. The note discusses how confidentiality has lost significance as a result of this prioritization and further argues that international arbitration has developed sufficient rules and limitations to ensure that fairness and justice are provided to participants. Ultimately, the note finds that appellate review and arbitral finality are inherently incompatible.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{132} CONFIDENTIALITY

{149} QUALITY CONTROL

**Shannon Karla**, Recent Development, *Koons Ford of Baltimore, Inc. v. Lobach*, 23 OHIO ST. J. ON DISP. RESOL. 421 (2008).

Maryland's highest court found that consumer arbitration clauses cannot require binding arbitration for Magnuson Moss Warranty Act claims. The decision has deepened the current split about what should predominate warranty claims: the Federal Arbitration Act or the Magnuson Moss Warranty Act.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{128} REQUIREMENTS: STATUTORY OR RULES

**Curtis E. A. Karnow**, *Conflicts of Interest and Institutional Litigants*, 32 J. LEGAL PROF. 7 (2008).

This article describes and adopts various game theory techniques and uses them to predict bargaining strategies among institutional litigants in negotiation of settlements. The author also asserts that conflicts of interest between lawyers and clients are often triggered when institutional litigants take part in the negotiation of settlements.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

{138} ETHICS: GENERAL



**Constantine N. Katsoris**, *Securities Arbitrators Do Not Grow on Trees*, 1435 FORDHAM J. CORP. & FIN. L. 49 (2008).

This article gives a general background on securities arbitration and discusses whether current methods for selecting securities arbitrators should be revamped.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{146} ORGANIZATION POLICIES & RULES

**Eric Keller**, *Time-Varying Compulsory License: Facilitation License Negotiation for Efficient Post-Verdict Patent Infringement*, 16 TEX. INTELL. PROP. L.J. 427 (2008).

Trial courts have begun instituting compulsory licenses as remedy for patent infringements, in place of permanent injunctions, which are sometimes inappropriate. This article argues that sometimes neither option is best, and instead a court should help facilitate negotiation between the patent-holder and patent-infringer, when infringement is the most efficient option.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{114} 3D PARTY: PRACTICE OF LAW

{133} COURT REFORMS

**Linda M. Keller**, *Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms*, 23 CONN. J. INT'L L. 209 (2008).

This article discusses the arms conflict between Uganda and the Lord's Resistance Army and related Ugandan alternative justice mechanisms. It also discusses interpretations of the Rome Statute that will allow the International Criminal Court to defer to alternative methods of justice.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{82} SUBJ MATTER: CRIMINAL

{146} ORGANIZATION POLICIES & RULES

**Ashley Kelly**, Note, *Bargaining Power on Broadway: Why Congress Should Pass the Playwrights Licensing Antitrust Initiative Act in the Era of Hollywood on Broadway*, 16 J.L. & POL'Y 877 (2008).

This note argues for the passage of the Playwrights Licensing Antitrust Initiative Act (PLAIA) in order to protect playwrights when negotiating with movie studios over the rights of screenplays. The author recognizes the growing presence of movie studios producing on Broadway, and posits that enactment of the PLAIA would remove the substantial discrepancy in

bargaining power that currently exists between movie studios and playwrights.

{1} NEGOTIATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{144} LEGISLATION

{147} POWER IMBALANCE

**Jennifer L. Kerrigan**, Comment, *"It's Not World Peace, But..." Restorative Justice: Analysis of Recidivism Rates in Campbell Law School's Juvenile Justice Project*, 30 CAMPBELL L. REV. 339 (2008).

Kerrigan's comment analyzes victim-offender mediation and focuses on the recidivism rates of juveniles who participated in the Juvenile Justice Project (JJP). The comment explores different theories of justice and concludes with restorative justice. The last four sections detail the JJP, its use of mediation as a tool, and how it affects recidivism rates.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{134} DISPUTE PREVENTION

**Karl Kirland & Matthew Sullivan**, *Parenting Coordination (PC) Practice: A Survey of Experience Professionals*, 46 FAM. CT. REV 622 (2008).

Parenting Coordination (PC) is rapidly growing field in the area of post-divorce activity. PC demands knowledge of various areas of law, psychology, and ADR. A survey of the use of these areas in the practice of PC would greatly benefit the budding field.

{60} ADR—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Rebecca A. Koford**, Note, *Conflicted Collaborating: The Ethics of Limited Representation in Collaborative Law*, 21 GEO. J. LEGAL ETHICS 827 (2008).

This note first discusses the development of collaborative law and how it functions. It then analyzes a particular situation: a Colorado committee's discussion of whether a lawyer and his or her client can contract for advanced assent to terminating the relationship, regardless of whether there is a Four-Way Agreement. The note concludes by examining the troubling ethical implication of financially precluding a client from switching to a different and possibly more appropriate form of dispute resolution when the collaborative law process fails to result in an agreement.

{53} COLLABORATIVE LAW—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{138} ETHICS: GENERAL

## {114} 3D PARTY: PRACTICE OF LAW

**Kimberlee K. Kovach**, *The Intersection (Collision) of Ethics, Law, and Dispute Resolution: Clashes, Crashes, No Stops, Yields, or Rights of Way*, 49 S. TEX. L. REV. 789 (2008).

Ethics for attorneys practicing in ADR fields need to change because of the differences in focus between litigation and ADR (adversary v. constructive representation). The author discusses various philosophies on possible directions to take the ethics reform

{60} ADR—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{138} ETHICS: GENERAL

{151} ROLE OF LAWYERS

**Elizabeth Kruse**, Comment, *ADR, Technology, and New Court Rules—Family Law Trends For the Twenty-First Century*, 21 J. AM. ACAD. MATRIM. LAW. 207 (2008).

This article examines the current developments of ADR in family law by looking at the continued use of mediation, the rapidly expanding use of collaborative and cooperative law, and how technology will enhance these methods of resolving disputes. Also, by exploring the new Arizona Family Rules of Procedure and the use of parenting coordinators in high conflict cases, this article highlights current trends around the country and issues to watch in the years to come

{53} COLLABORATIVE LAW—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{155} TEACHING

**Jennifer M. Kuhn**, Comment, *Working Around the Withdrawal Agreement: Statutory Evidentiary Safeguards Negate the Need for a Withdrawal Agreement in Collaborative Law Proceedings*, 30 CAMPBELL L. REV. 363 (2008).

Collaborative law requires attorneys to withdraw from a case if the parties cannot come to a resolution and move to litigate. Kuhn argues that there is no need for withdrawal if the state's statutes contain confidentiality provisions. These provisions prevent admissibility in court of information garnered from the collaborative law proceedings.

{53} COLLABORATIVE LAW—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{132} CONFIDENTIALITY

**Maureen E. Laflin**, *The Mediator as Fugu Chef: Preserving Protections Without Poisoning the Process*, 49 S. TEX. L. REV. 943 (2008).

The author uses an analogy of cooking the fugu fish, which is poisonous if not cooked properly, to mediators' struggle with open communication versus what may be admissible in criminal proceedings. Laflin discusses whether mediation can be run effectively with such a struggle, and if not, what should be done.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{132} CONFIDENTIALITY

{133} COURT REFORMS

**Stephanie R. Lamb**, *Contract Law: Pigs Do Fly: A New Test Limiting the Scope of Arbitration Clauses in South Carolina*, 59 S.C.L. REV. 513 (2008).

This article discusses two cases that actually limited the application of an arbitration clause, whereas ordinarily such clauses almost always result in arbitration. The author attempts to unravel the implications of these two cases and determine SC's theories on applicability of arbitration agreements.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{133} COURT REFORMS

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**John Lande**, *Practical Insights from an Empirical Study of Cooperative Lawyers in Wisconsin*, 2008 J. DISP. RESOL. 203 (2008).

This article examines a recent study on collaborative law by the Divorce Cooperation Institute in Wisconsin. The study also examines a small, new "cooperative" movement that has started to grow in the shadow of the collaborative movement. The study describes the cooperative movement, the members' views and goals on cooperative law, the impact of the cooperative and collaborative movement on legal practice generally, and concludes with recommendations for how lawyers can incorporate cooperative practice techniques.

{53} COLLABORATIVE LAW—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**David Allen Larson**, *Conflicts of Interest and Disclosures: Are We Making a Mountain Out of a Molehill?*, 49 S. TEX. L. REV. 879 (2008).

This article discusses ethical conflicts of interests and disclosure requirements for arbitrators. It has a focus on the penalties for improper nondisclosure, particularly vacatur.

{60} ADR—GENERAL

- {102} SUBJ MATTER: PUBLIC POLICY
- {139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE
- {146} ORGANIZATION POLICIES & RULES

**David Allen Larson & Paula Gajewski Mickelson**, *Technology Mediated Dispute Resolution Can Improve the Registry of Interpreters for the Deaf Ethical Practices System: The Deaf Community is Well Prepared and Can Lead by Example*, 10 CARDOZO J. CONFLICT RESOL. 131 (2008).

Using the example of Registry of Interpreters for the Deaf (RID), this article discusses how technology can be used to improve ADR mechanisms within the deaf community. Moreover, it discusses the broad benefits of technology in ADR processes.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

**Stanley A. Leasure & Wayne L. Anderson**, *Arbitration of Attorney/Client Disputes: The Missouri Perspective*, 64 J. MO. B 132 (2008).

This article examines the use of arbitration in attorney-client contracts and whether they should be allowed in the state of Missouri

- {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
- {99} SUBJ MATTER: OTHER PROF MALPRACTICE
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Stanley A. Leasure & Kent P. Ragan**, *Arbitration of Medical Malpractice Claims: Patient's Dilemma and Doctor's Delight?*, 28 MISS. C. L. REV. 51 (2008).

Discussing the use of pre-dispute arbitration agreements between doctors and patients, this article suggests that these agreements should be regulated through ethical codes for those in the medical field.

- {44} ARBITRATION—GENERAL
- {98} SUBJ MATTER: MEDICAL MALPRACTICE
- {102} SUBJ MATTER: PUBLIC POLICY
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Edward Lee**, *Warming Up to User-Generated Content*, 2008 U. ILL. L. REV. 1459 (2008).

Professor Lee describes gaps in copyright legislation and discusses the resulting various legal issues. He proposes that copyright disputes arising from these gaps can be prevented by applying informal, ADR practices.

- {60} ADR—GENERAL
- {78} SUBJ MATTER: COMPUTER—INTERNET
- {134} DISPUTE PREVENTION

**Ilhyung Lee**, *Practice and Predicament: The Nationality of the International Arbitrator (with Survey Results)*, 31 FORDHAM INT'L L.J. 603 (2008).

Examines the impact that the nationality of the arbitrator has on the arbitration process.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{146} ORGANIZATION POLICIES & RULES

**Michael H. LeRoy**, *Misguided Fairness? Regulating Arbitration by Statute: Empirical Evidence of Declining Award Finality*, 83 NOTRE DAME L. REV. 551 (2008).

Author details issues with the Federal Arbitration Act—the article is an in-depth empirical study.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{121} SETTLEMENT: AUTHORITY

**Michael H. LeRoy & Peter Feuille**, *Happily Never After: When Final and Binding Arbitration Has No Fairy Tale Ending*, 13 HARV. NEGOT. L. REV. 167 (2008).

This article looks at the issue of court review of final and binding arbitrations. The authors argue that courts are extremely deferential in reviewing employment awards and that court review of arbitration is rapidly growing even though the chance of overturning an award is very poor.

{44} ARBITRATION—GENERAL

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**W. Reed Leverton**, *The Case for Best Practice Standards in Restorative Justice Processes*, 31 AM. J. TRIAL ADVOC. 501 (2008).

The restorative justice movement has a promising future in helping to reform modern criminal justice systems through its ability to allow offenders to make amends to victims. There are also significant risks, especially for feelings of re-victimization, and it is necessary to develop a set of universally accepted standards or best practices.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{133} COURT REFORMS

{124} COMPARISONS: CROSS-CULTURAL

**Ariana R. Levinson**, *Lawyering Skills, Principles and Methods Offer Insight as to Best Practices for Arbitration*, 60 BAYLOR L. REV. 1 (2008).

This article analyzes the use of litigation principles in establishing best practices for arbitration and describes the benefits of adapting these principles to arbitration. Next, the article discusses two separate contexts where these principles are useful: drafting the rules governing arbitration and preparing and presenting a case at the arbitration hearing. The article concludes by discussing how scholars, teachers, and practitioners can adopt the best practices discussed in the article.

{44} ARBITRATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{155} TEACHING

**Tory H. Lewis**, Note, *Managing Manure: Using Good Neighbor Agreements to Regulate Pollution from Agricultural Production*, 61 VAND. L. REV. 1555 (2008).

This author looks at the increasing number of nuisance suits brought against farmers and the shortcomings in environmental law in dealing with this problem. This note argues that by negotiating contracts known as “good neighbor agreements,” farmers and local community members can work cooperatively to make farm operations more transparent and environmentally friendly. These agreements, the author argues, would be the best way to protect farmers from potential nuisance suits.

{1} NEGOTIATION—GENERAL

{86} SUBJ MATTER: FARM

{77} SUBJ MATTER: COMMUNITY

{134} DISPUTE PREVENTION

**Jacqueline D. Lipton**, *A Winning Solution for YouTube and Utube? Corresponding Trademarks and Domain Name Sharing*, 21 HARV. J.L. & TECH. 509 (2008).

This article discusses the possible development of domain name sharing strategies. The author maintains that if a new arbitration procedure were added to the Uniform Domain Name Dispute Resolution Policy to facilitate domain name sharing on the basis of the complainant’s assertion of a legitimate trademark interest corresponding to the relevant domain name, the registrant of the domain name should be entitled to oppose the assertion.

{44} ARBITRATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{78} SUBJ MATTER: COMPUTER—INTERNET

{147} POWER IMBALANCE

**William B. L. Little**, *Fairness is in the Eyes of the Beholder*, 60 BAYLOR L. REV. 73 (2008).

This article argues that the National Association of Securities Dealers (NASD) arbitration process has not adequately fulfilled the Congressional intent to provide investor protection. The article discusses the effects of Supreme Court decisions and recent legislation on the enforcement of mandatory pre-dispute securities arbitration agreements. The article traces the evolution of securities arbitration, focusing on the NASD Code of Arbitration and the creation of Financial Industry Regulatory Agency (FINRA). The article concludes with recommendations for revisions to securities arbitration.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{128} REQUIREMENTS: STATUTORY OR RULES

**Daniel T. Lloyd**, Comment, *Reaching Too Far? An Analysis of the Circuit Split Regarding the Scope of Arbitration Clauses in Collective Bargaining Agreements*, 11 U. PA. J. BUS. L. 237 (2008).

Examines the circuit split regarding which standard—collateral test or scope test—to apply to “side agreements” during collective bargaining. Argues that the scope test should be used because of its predictability.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{125} COMPARISONS: HISTORICAL

**Melissa Lombreglia**, *The Calm After the Storm: Using Mediation to Resolve Parenting Disputes in the Wake of Natural Disasters*, 46 FAM. CT. REV 395 (2008).

In the wake of natural disasters, many families are dissatisfied with the way courts have dealt with their disputes. The best solution is a federal statute that would mandate mediation every time a child relocates with one parent in the wake of a natural disaster. Additionally, parents who share custody of a child would be encouraged to create a new arrangement when one parent relocates after a natural disaster.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{127} REQUIREMENTS: MANDATE TO USE

{144} LEGISLATION

**Lela P. Love & Stewart E. Sterk**, *Leaving More Than Money: Mediation Clauses in Estate Planning Documents*, 65 WASH. & LEE L. REV. 539 (2008).



While courts often offer mediation as an alternative to litigation in disputes over estates, this article specifically examines the benefits of testator implementation of a mediation clause in the will as well as the challenges of implementing mandatory mediation.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{134} DISPUTE PREVENTION

**Haina Lu**, *New Developments in China's Labor Dispute Resolution System: Better Protection for Workers' Rights?*, 29 COMP. LAB. L. & POL'Y J. 247 (2008).

China's Labor Dispute Resolution System (LDR) and the Applicable Law for the Trial of Labor Disputes Cases (Interpretation II) are discussed. The state of labor dispute resolution in China is discussed both before and after Interpretation II.

{60} ADR—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

**Jeffrey S. Lubbers**, *Achieving Policymaking Consensus: The (Unfortunate) Waning of Negotiated Rulemaking*, 49 S. TEX. L. REV. 987 (2008).

Negotiated rulemaking emerged in the 1980s. Since then it has drastically declined to half of what it once was. This article discusses varying reasons why that might be.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{144} LEGISLATION

{146} ORGANIZATION POLICIES & RULES

**Dr. Julie Macfarlane**, *The Evolution of the New Lawyer: How Lawyers Are Reshaping the Practice of Law*, 2008 J. DISP. RESOL. 61 (2008).

This article examines some of the most significant changes affecting legal practice, especially civil litigation, and asks what adjustments in the professional identity and role of the lawyer these imply. The author presents suggestions in the areas of client advocacy, legal negotiation, and the lawyer-client relationship.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

{151} ROLE OF LAWYERS

**Roberto MacLean**, *The Valuation of Damages in International Investment Disputes*, 14 LAW & BUS. REV. AM. 3 (2008).

This article analyzes the valuation of damages processes in international disputes. Specifically, it focuses on the valuation of damages in Kuwait caused by the invasion of Iraqi forces.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

**Solangel Maldonado**, *Cultivating Forgiveness: Reducing Hostility and Conflict After Divorce*, 43 WAKE FOREST L. REV. 441 (2008).

This article discusses the negative effects of hostility and conflict on both parents and children. It provides an examination of the restorative justice movement and suggests that high-conflict parents participate in forgiveness education programs to resolve disputes.

{60} ADR—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Martin H. Malin & Monica Birnat**, *Do Cognitive Biases Infect Adjudication? A Study of Labor Arbitrators*, 11 U. PA. J. BUS. L. 175 (2008).

This article explores the possibility that subconscious biases of arbitrators could lead to discriminatory results in arbitration, specifically within the subset of labor arbitration.

{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{149} QUALITY CONTROL

**Brandon Marsh**, *Preventing the Inevitable: The Benefits of Contractual Risk Engineering in Light of Venezuela's Recent Oil Field Nationalization*, 13 STAN J.L. BUS. & FIN. 453 (2008).

This article discusses the renegotiations of the four heavy oil projects in Venezuela's Orinoco oil belt. It explores whether foreign oil companies were successful in "engineering out" the risk of investments via long-term contracts and whether oil companies' divergent choices regarding arbitration use reveal anything about the value of provisions for international arbitration as an external legal check.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{149} QUALITY CONTROL

**Bobbi McAdoo**, *Physicians: Listen Up and Take Your Communications Skills Training Seriously*, 29 HAMLINE J. PUB. L. & POL'Y 287 (2008).

This essay looks at the broad institutional support now in place for communications skills training in the medical field. The effect of mediation skills training is examined for its role in changing the approach some lawyers take in conflict resolution and the practice of law.

{21} MEDIATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{134} DISPUTE PREVENTION

**W. Dudley McCarter**, *Property Owner Entitled to Prejudgment Interest on Inverse Condemnation Damages*, 64 J. Mo. B. 113 (2008).

This article is about the award of prejudgment interest in condemnation damage awards. There is a small section that discusses if mandatory arbitration agreements should be upheld if the contract is induced by fraud

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

**Jennifer McIntosh et al.**, *Child-Focused and Child Inclusive Divorce Mediation: Comparative Outcomes From a Prospective Study of Postseparation Adjustment*, 46 FAM. CT. REV. 105 (2008).

A year-long study which examined the effect of child-focused and child inclusive mediation on parenting disputes. Parents were encouraged to focus on the needs and wishes of their children in mediating their disputes. This type of mediation resulted in a higher rate of repair for parental relationships and allowed for emotionally available parenting in the midst of divorce proceedings.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{134} DISPUTE PREVENTION

{149} QUALITY CONTROL

**David J. McLean & Sean-Patrick Wilson**, *Is Three A Crowd? Neutrality, Partiality and Partisanship in the Context of Tripartite Arbitrations*, 9 PEPP. DISP. RESOL. L.J. 167 (2008).

History of Tripartite Arbitrations, legal issues involved therein, and practical considerations for practitioners

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{114} 3D PARTY: PRACTICE OF LAW

**Lawrence P. McLellan**, *Expanding the Use of Collaborative Law: Consideration of Its Use in a Legal Aid Program for Resolving Family Law Disputes*, 2008 J. DISP. RESOL. 465 (2008).

This article examines some of the issues confronted by a legal aid program in considering whether a collaborative law process is a viable dispute resolution mechanism for family law disputes.

{53} COLLABORATIVE LAW—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{146} ORGANIZATION POLICIES & RULES

**B. Steven Messick**, *Standard Contract Documents: A Positive Step Towards Fair, Transparent, and Collaborative Resolution of Disputes on Construction Projects*, 29 HAMLINE J. PUB. L. & POL'Y 499 (2008).

The first half of this article provides a detailed account of the construction industry in the United States, focusing on the parties involved, the nature of disputes that arise, and how those disputes are handled. The second half of the article provides an analysis of the actual American Institute of Architects (AIA) contract documents, both before and after the substantive 2007 changes. It then analyzes the 2007 AIA documents and describes the recent changes to these dispute resolution provisions, explores the impact these changes may have on the construction industry, and finally, discusses the beneficial nature of these modifications.

{60} ADR—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

{136} ECONOMIC ADVANTAGES OF ADR

{149} QUALITY CONTROL

**Judge Gray H. Miller & Emily B. Buckles**, *Reviewing Arbitration Awards in Texas*, 45 HOUS. L. REV. 939 (2008).

This article examines the judicial review of arbitration awards in Texas within the context of non-adhesive business contracts negotiated by sophisticated parties. It analyzes the scope of review under the Federal Arbitration Act in light of *Hall Street Associates, L.L.P. v. Mattel, Inc.* Additionally, it discusses whether the Texas General Arbitration Act or Texas common law arbitration offers alternative methods that sophisticated business parties can negotiate for review alternatives.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Meredith R. Miller**, *Contracting Out of Process, Contracting Out of Corporate Accountability: An Argument Against Enforcement of Pre-Dispute Limits on Process*, 75 TENN. L. REV. 365 (2008).

The article posits that, absent federal legislative reforms, corporations should use express procedural limitations in arbitration clauses. This will allow corporations to both contract around substantive accountability and use a choice-of-law clause in order to enforce such limitations

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Daniel B. Moar**, *Arbitrating Hate: Why Binding Arbitration of Discrimination Claims Is Appropriate for Union Members*, 10 DUQ. BUS. L.J. 47 (2008).

For union members, binding arbitration is an excellent way to resolve discrimination disputes with employers. The article argues that critics have overly optimistic views of the court system, and that arbitration provides a venue for employees to vindicate their rights.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{133} COURT REFORMS

**Robert B. Moberly & Laura E. Levine**, *The New Arkansas Appellate-Mediation Program*, 61 ARK. L. REV. 429 (2008).

This article provides an in-depth profile of the appellate mediation program established by the Arkansas Supreme Court. The article also details federal appellate mediation programs and appellate mediation programs in other states. After a thorough analysis of the benefits of appellate mediation, the article concludes that the Arkansas program has many positive features but needs to be evaluated in the coming years.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{133} COURT REFORMS

{144} LEGISLATION

**Leda Moloff**, Note, *On the Face of It? Establishing Jurisdiction on Claims to Compel Arbitration Under Section 4 of the FAA*, 77 FORDHAM L. REV. 181 (2008).

This article discusses Section 4 of the Federal Arbitration Act. Specifically, the author discusses how the Act allows a party with an arbitration agreement to bring suit to compel arbitration if the dispute between parties is brought to court. Moloff also discusses the circuit split over how to establish jurisdiction when faced with a claim to compel arbitration. The article argues in favor of courts that choose jurisdiction based on the well-pleaded

complaint rule rather than courts that “look through” to the underlying complaint between the parties.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{73} SUBJ MATTER: GENERAL

{127} REQUIREMENTS: MANDATE TO USE

{133} COURT REFORMS

**Amy Moore**, Note, *Expanding the Power of U.S. Courts in Private International Arbitration—Moderation Loses to an Extreme: In re Oxus Gold PLC*, 2008 J. DISP. RESOL. 321 (2008).

In *Intel Corp. v. Advanced Micro Devices*, the Supreme Court attempted to interpret a section of 28 U.S.C. § 1782. Along with expanding the scope of § 1782, the Court also created an ambiguity in how the statute should relate to private international arbitration. This note traces the progression of § 1782 interpretation from pre-*Intel* precedent to the most recent post-*Intel* reasoning of *In re Oxus Gold* and answers the question, “How far should § 1782 reach?”

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT’L

{144} LEGISLATION

{124} COMPARISONS: CROSS-CULTURAL

**Judith D. Moran**, *Families, Courts, and the End of Life: Schiavo and Its Implications for the Family Justice System*, 46 FAM. CT. REV. 297 (2008).

End of life issues necessarily involve family members and create emotional situations. Family court should be the forum for end of life cases because regular courts have been unsuccessful at balancing all the involved interests and because family court is better equipped to deal with end of life situations. Mediation is a viable litigation alternative in these cases, and family courts can effectively implement mediation programs.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{133} COURT REFORMS

**Forrest S. Mosten**, *Collaborative Law Practice: An Unbundled Approach to Informed Client Decision Making*, 2008 J. DISP. RESOL. 163 (2008).

This article is intended to explore the development of informed decision making/consent for unbundled legal services and collaborative law. The article presents various models of collaborative practice available and forwards suggestions which might help clients make informed decisions prior to commencing a collaborative law engagement.

{53} COLLABORATIVE LAW—GENERAL

- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE
- {151} ROLE OF LAWYERS

**Mark L. Movsesian**, *International Commercial Arbitration and International Courts*, 18 DUKE J. COMP. & INT'L L. 423 (2008).

Although states tend to enforce international commercial arbitration decisions, states have been much less willing to enforce rulings by international courts. This is partially because of legitimacy concerns and because of the difference in the level of support from domestic actors. This article describes international commercial arbitration and international adjudication while exploring their differences.

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {92} SUBJ MATTER: INT'L
- {124} COMPARISONS: CROSS-CULTURAL

**Luz E. Nagle**, *Process Issues of Columbia's New Accusatory System*, 14 SW. J. L. & TRADE AM. 223 (2008).

This article assesses the impact of altering Columbia's criminal adjudication from an inquisitorial system to an oral accusatory built on Anglo-American practice and procedures. Specifically, it examines the process and impact of reforming the criminal-justice system in Colombia by looking at the motivations behind the reforms and at the individual actors involved in the new accusatory trial process. It also discusses two of the most controversial aspects in the new system: plea bargains (through negotiation) and victims' rights.

- {1} NEGOTIATION—GENERAL
- {82} SUBJ MATTER: CRIMINAL
- {124} COMPARISONS: CROSS-CULTURAL
- {125} COMPARISONS: HISTORICAL

**Reid A. Nicolosi**, Note, *Arbitration in International Double Taxation Matters*, 34 MI TAX L. 35 (2008).

Nicolosi examines the topic of disputes arising from double taxation in the world economy by questioning whether tax arbitration agreements between nations can assist in the furtherance of cross-border transactions. Answering in the affirmative, Nicolosi concludes that tax arbitration agreements between nations promote transnational business transactions by providing a resolution mechanism for tax disputes while actively trading. Nicolosi also concludes that tax arbitration agreements provide certainty and minimize loss of trading time.

- {44} ARBITRATION—GENERAL
- {108} SUBJ MATTER: TAX
- {92} SUBJ MATTER: INT'L
- {136} ECONOMIC ADVANTAGES OF ADR

**Jennifer Nou**, Note, *Regulating the Rulemakers: A Proposal for Deliberative Cost-Benefit Analysis*, 26 YALE L. & POL'Y REV. 601 (2008).

The author argues for "deliberative cost-benefit analysis," which combines the school of deliberative, reasoned, decision-making with economic concepts. The article touches upon the Negotiated Rulemaking Act of 1990, which authorizes regulatory negotiation as a means to make rules.

- {1} NEGOTIATION—GENERAL
- {104} SUBJ MATTER: REGULATORY
- {146} ORGANIZATION POLICIES & RULES

**Jide Nzelibe**, *The Case Against Reforming the WTO Enforcement Mechanism*, 2008 U. ILL. L. REV. 319 (2008).

Some authors suggest that the current enforcement of the World Trade Organization's Dispute Settlement Body's decisions is unfair to weak parties in the agreement and suggest to impose monetary damages enforceable by the Organization itself, not by individual parties. Nzelibe opposes such reforms stating that they do not take into consideration domestic factors.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES
- {147} POWER IMBALANCE

**Susan Oberman**, *Style vs. Model: Why Quibble?*, 9 PEPP. DISP. RESOL. L.J. 1 (2008).

The author posits that the type of language used in mediation is critical to the mediation itself and in defining what mediators do.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {155} TEACHING

**Carlo Osi**, *Understanding Indigenous Dispute Resolution Processes and Western Alternative Dispute Resolution Cultivating Culturally Appropriate Methods in Lieu of Litigation*, 10 CARDOZO J. CONFLICT RESOL. 163 (2008).

This article examines the forms of dispute resolution that Western indigenous cultures use to resolve disputes among themselves. The article further discusses how these practices benefit the indigenous communities and may be a successful tool to resolve modern intellectual property disputes.



- {60} ADR—GENERAL
- {77} SUBJ MATTER: COMMUNITY
- {124} COMPARISONS: CROSS-CULTURAL
- {136} ECONOMIC ADVANTAGES OF ADR

**Ralph Peeples et al.**, *It's the Conflict, Stupid: An Empirical Study of Factors that Inhibit Successful Mediation in High-Conflict Custody Cases*, 43 WAKE FOREST L. REV. 505 (2008).

This article is an analysis of instances where individuals have solicited the legal system to resolve their custody disputes. It then suggests which types of custody cases are best suited for mediation.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {133} COURT REFORMS

**Shin-yi Peng**, *How Much Time Is Reasonable?—The Arbitral Decisions Under Article 21.3(c) of the DSU*, 26 BERKELEY J. INT'L L. 323 (2008).

This article argues that arbitrators should consider correlations between specific domestic political events and members' WTO obligations in reaching their decisions. It provides an overview of arbitral decisions interpreting Article 21.3(c) of the Understanding of Rules and Procedures Governing Settlement of Dispute (the rules which govern the Dispute Settlement Board of the World Trade Organization).

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L

**Scott R. Peppet**, *The Ethics of Collaborative Law*, 2008 J. DISP. RESOL. 131 (2008).

This article argues that collaborative law can be permissible under the current rules of legal ethics and tries to create clarity and provide guidance for collaborative lawyers. The article includes a discussion of existing ethics opinions with a focus on Colorado Ethics Committee Opinion 115.

- {53} COLLABORATIVE LAW—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {138} ETHICS: GENERAL

**Ashley Carrington Perea**, Note, *Broad Discretion: A Choice in Applying Offensive Non-Mutual Collateral Estoppel*, 40 ARIZ. ST. L.J. 1145 (2008).

This note discusses and analyzes the recent case *Collins v. D.R. Horton* and its impact on arbitration.

- {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
- {73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY  
{127} REQUIREMENTS: MANDATE TO USE

**Neil M. Peretz**, *The Single Euro Payment Area: A New Opportunity for Consumer Alternative Dispute Resolution in the European Union*, 16 MICH. ST. J. INT'L L. 573 (2008).

Peretz addresses the Single Euro Payments Area (SEPA) in the European Union, which calls for the harmonization of debit and credit card networks in order to remove differentiation between national and cross border payment. In analyzing SEPA, Peretz proposes the implementation of the chargeback process to increase consumer leverage and incentivize business participation in ADR, which in turn provides cost-effective consumer redress in both national and international market purchases.

{60} ADR—GENERAL  
{79} SUBJ MATTER: CONSUMER  
{136} ECONOMIC ADVANTAGES OF ADR

**Don Peters**, *Just Say No: Minimizing Limited Authority Negotiating in Court-Mandate Mediation*, 8 PEPP. DISP. RESOL. L. J. 273 (2008).

The article looks into the use of limited authority statements by attorneys in court-mandated mediation. Peters suggests that attorneys do more research and preparation prior to the mediation so that they can resolve issues rather than claim that they do not have authority to advocate certain aspects of the dispute.

{21} MEDIATION—GENERAL  
{73} SUBJ MATTER: GENERAL  
{121} SETTLEMENT: AUTHORITY  
{127} REQUIREMENTS: MANDATE TO USE

**Ernst-Ulrich Petersmann**, *Why Rational Choice Theory Requires a Multilevel Constitutional Approach to International Economic Law*, 2008 U. ILL. L. REV. 359 (2008).

Petersman argues that WTO enforcement mechanisms should not be left to the discretion of individual participants because it would not be efficient. His arguments are largely made in response to Jide Nzelibe's article in the same journal volume.

{44} ARBITRATION—GENERAL  
{92} SUBJ MATTER: INT'L  
{126} REQUIREMENTS: CONTRACTUAL CLAUSES  
{147} POWER IMBALANCE

**Donald R. Philbin, Jr.**, *The One Minute Manager Prepares for Mediation: A Multidisciplinary Approach to Negotiation Preparation*, 13 HARV. NEGOT. L. REV. 249 (2008).

This article explains how lawyers and managers can enjoy greater success in mediation. It provides a decision tree for establishing an individualized dispute resolution process that focuses on the roles that need to be filled and who should fill them. The article achieves this negotiating planning instrument by analyzing a traditionally litigated case, overlaying it with an economic decision tree and then adapting it to negotiation planning.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{146} ORGANIZATION POLICIES & RULES

{151} ROLE OF LAWYERS

**Donald R. Philbin, Jr. & Audrey Lynn Maness**, *Fifth Circuit Survey June 2006-May 2007 Survey Articles*, 40 TEX. TECH. L. REV. 445 (2008).

This is a summary of cases involving alternative dispute resolution from the Fifth Circuit from mid-2006 to mid-2007. The article analyzes several trends that may be emerging in arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

{128} REQUIREMENTS: STATUTORY OR RULES

**Donald R. Philbin, Jr. & Audrey Lynn Maness**, *Litigation Arbitration: A 2007 Texas Arbitration Review*, 60 BAYLOR L. REV. 613 (2008).

This article is a review of recent Texas case law, which suggests that a non-signatory may be bound to arbitrate in accordance with an arbitration agreement if it engages in “interdependent and concerted misconduct” with a signatory. The article begins with a review of Texas procedure and application the Texas Arbitration Act (TAA) and the Federal Arbitration Act (FAA), and concludes with recent case law concerning the enforcement of arbitration agreements.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{93} SUBJ MATTER: LABOR—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Charles Pou, Jr.**, *Federal Agency ADR: Turning Square Corners to Meet Real Challenges*, 49 S. TEX. L. REV. 1019 (2008).

There is an old saying that citizens must turn square corners when dealing with the government. Perhaps the same applies when the government is

dealing with citizens. This article states that in federal agency ADR, these two principles go hand in hand, but haven't always been that way in practice.

{60} ADR—GENERAL

{87} SUBJ MATTER: GOV'T

{147} POWER IMBALANCE

**Matthias Prause**, *The Oxymoron of Measuring the Immeasurable: Potential and Challenges of Determining Mediation Developments in the U.S.*, 13 HARV. NEGOT. L. REV. 131 (2008).

This article looks at the Mediation Receptivity Index (MRI). The article presents a first attempt to develop a detailed methodology to determine the MRI and apply it to currently available empirical data. The author also discusses the difficulties that have been encountered, thus providing a starting point for further research.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

**Bridget B. Prizio**, Note, *Restoring Investor Confidence: Providing Uniformity in Securities Arbitration by Offering Guidelines for Arbitrators in Deciding Motions to Dismiss Before a Hearing on the Merits*, 58 SYRACUSE L. REV. 375 (2008).

This note argues for uniformity in guiding arbitrators in deciding motions before a hearing on the merits within securities arbitrations. Specifically, rules guiding pre-discovery dispositive motions would benefit investor trust.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{133} COURT REFORMS

**Will Pryor**, *Alternative Dispute Resolution*, 61 SMU L. REV. 519 (2008).

This article discusses developments in mediation and arbitration, and briefly summarizes the status of collaborative law.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{155} TEACHING

**Catherine Pugh**, Comment, *What Do You Get When You Add Megan Williams to Matthew Shepard and Victim-Offender Mediation? A Hate Crime Law that Prosecutors Will Actually Want to Use*, 45 CAL. W. L. REV. 179 (2008).

Evaluates the use of Victim-Offender Mediation in hate crime punishment.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

## {144} LEGISLATION

**Toni S. Reed & Michael D. Feiler**, *Construction and Surety Law*, 61 SMU L. REV. 705 (2008).

Part V of this article discusses the enforcement of the scope of arbitration provisions within construction contracts. This section focuses on Texas case law and discusses mandamus proceedings on arbitration clauses, deletion or omission of arbitration clauses, waiver of arbitration clauses, and review of enforcement of arbitration clauses.

{44} ARBITRATION—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Bryon A. Rice**, Comment, *Enforceable or Not?: Class Action Waivers in Mandatory Arbitration Clauses and the Need for a Judicial Standard*, 45 HOUS. L. REV. 215 (2008).

This comment identifies the differing treatment of the validity of class action waivers in mandatory arbitration clauses, particularly in consumer contracts by federal and state courts as an issue in need of clarification. It discusses the history of arbitration and class action in the United States, highlighting incompatibilities when the two procedures merge. Additionally, it proposes a two-pronged judicial standard for analyzing the validity of class action waivers.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{127} REQUIREMENTS: MANDATE TO USE

**Thomas Riske**, Note, *Interest Arbitration Clauses in §8(F) Pre-Hire Agreements: Effective for Achieving Genuine Collective Bargaining or Enabling Parties to Underhandedly Gain Majority Bargaining Power?* Sheet Metal Workers' Int'l Ass'n, Local Union No. 2 v. McElroy's, Inc., 2008 J. DISP. RESOL. 333 (2008).

This note discusses the recent Tenth Circuit decision in *Sheet Metal Workers' International Ass'n, Local Union No. 2 v. McElroy's Inc.* and its treatment of interest arbitration clauses in pre-hire agreements.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{147} POWER IMBALANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Leonard L. Riskin & Nancy A. Welsh**, *Is That All There Is? "The Problem" in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 3001 (2008).

The authors seek to bring to light the general problems that arise between the parties in civil, non-family mediation when the parties have differing legal expertise and how lawyers should seek to avoid or correct these issues. Overall, the authors introduce proposals outlining new court programs for mediators and more "customized" mediation programs.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

{127} REQUIREMENTS: MANDATE TO USE

**Stephen A. Rosenbaum**, *The Juris Doctor Is In: Making Room at Law School for Paraprofessional Partners*, 75 TENN. L. REV. 315 (2008).

Paraprofessional programs should foster "integrated" education by requiring classroom and clinical participation with traditional law students and paraprofessionals. The curriculum should develop intrinsic values and teach individuals that the practice of law requires a team approach. Lay advocates may engage in ADR practices successfully.

{60} ADR—GENERAL

{83} SUBJ MATTER: EDUCATION

{155} TEACHING

**Rachel Alexandra Ross**, *Meet Me on Death Row: Post-Sentence Victim-Offender Mediation in Capital Cases*, 9 PEPP. DISP. RESOL. L.J. 185 (2008).

This article discusses the potential benefits of victim-offender mediation between offenders and family members of victims involved in capital punishment cases.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

**Mel Rubin**, *Disaster Mediation: Lessons in Conflict Coordination and Collaboration*, 9 CARDOZO J. CONFLICT RESOL. 351 (2008).

Rubin explores what should be the appropriate procedures, functions, and administration of ADR mediation programs that deal with disaster relief.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

**Peter B. Rutledge**, *Arbitration and Article III*, 61 VAND. L. REV. 1189 (2008).

This article addresses the question of whether arbitration violates Article III when federal statutory rights are at issue. The author rejects the principle of waiver, which is the traditional theory used to explain arbitration's compatibility with Article III, in favor of appellate review theory. The author then applies appellate review theory to various forms of arbitration and addresses criticisms of the theory.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{104} SUBJ MATTER: REGULATORY

{127} REQUIREMENTS: MANDATE TO USE

**Peter B. Rutledge**, *Whither Arbitration?*, 6 GEO. J.L. & PUB. POL'Y 549 (2008).

This article identifies the new reform proposals for arbitration that are currently being debated by scholars and policymakers. The focus is on Congressional consideration to prohibit the enforcement of pre-dispute arbitration clauses in employment, consumer, and franchise contracts. Rutledge takes the position that many of the assumptions driving the arbitration reform debate are either unproven or flatly wrong. Therefore, the article argues that such proposals by Congress could actually hurt the consumers and employees that Congress is trying to help.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{125} COMPARISONS: HISTORICAL

{144} LEGISLATION

**Peter B. Rutledge**, *Who Can Be Against Fairness? The Case Against the Arbitration Fairness Act*, 9 CARDOZO J. CONFLICT RESOL. 267 (2008).

Rutledge argues that the Arbitration Fairness Act should not be enacted because it would harm arbitration as a form of dispute resolution. In the second part of the article he analyzes why post-dispute arbitration is not a reasonable alternative to the current system that utilizes enforceable pre-dispute arbitration clauses.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{128} REQUIREMENTS: STATUTORY OR RULES

**Noah Sachs**, *Beyond the Liability Wall: Strengthening Tort Remedies in International Environmental Law*, 55 UCLA L. REV. 837 (2008).

Currently, environmental civil treaties are rarely adopted and scarcely enforced. The author presents a macro-level model to demonstrate problems and then outlines a solution.

{1} NEGOTIATION—GENERAL  
 {92} SUBJ MATTER: INT'L  
 {84} SUBJ MATTER: ENVIRONMENT  
 {147} POWER IMBALANCE

**Patricia E. Salkin & Amy Lavine**, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J. ENVTL. L. & POL'Y 291 (2008).

Community Benefit Agreements are contracts negotiated between communities and developers where the residents are able to protect against their fears. This article discusses the history, use, and enforcement of such agreements and analyzes how they are negotiated.

{1} NEGOTIATION—GENERAL  
 {77} SUBJ MATTER: COMMUNITY  
 {134} DISPUTE PREVENTION

**Marren Sanders**, *Ecosystem Co-Management Agreements: A Study of Nation Building or a Lesson on Erosion of Tribal Sovereignty?*, 15 BUFF. ENVTL. L.J. 97 (2007).

This article discusses the need for the tribes of the Northwest and the U.S. government to work together on negotiation approaches to preserve the salmon population.

{1} NEGOTIATION—GENERAL  
 {77} SUBJ MATTER: COMMUNITY  
 {84} SUBJ MATTER: ENVIRONMENT  
 {124} COMPARISONS: CROSS-CULTURAL

**Kalenna Scamman**, Note, *ADR in the Music Industry: Tailoring Dispute Resolution to the Different Stages of the Artist-Label Relationship*, 10 CARDOZO J. CONFLICT RESOL. 269 (2008).

This note discusses the problems record labels have with their artists and how these problems can be solved through ADR instead of litigation.

{44} ARBITRATION—GENERAL  
 {107} SUBJ MATTER: SPORTS & ENTERTAINMENT

**Suzanne M. Scheller**, *Arbitrating Wrongful Death Claims for Nursing Home Patients: What Is Wrong with this Picture and How to Make It "More" Right*, 113 PENN ST. L. REV. 527 (2008).

This article discusses issues surrounding mandatory arbitration clauses in nursing home admission contracts, proposes that wrongful death claims be



excluded from admission contracts, and proposes that admissions contracts articulate mandatory arbitration clauses in clear provisions.

{44} ARBITRATION—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{138} ETHICS: GENERAL

**Suzanne J. Schmitz**, *Guardians Ad Litem Do Not Belong in Family Mediations*, 8 PEPP. DISP. RESOL. L. J. 221 (2008).

The article examines the problems associated with appointing a guardian ad litem (GAL) in a family mediation. The confidentiality protection afforded to the parents may be compromised by the presence of a GAL. Appointment of a GAL should take place after the mediation to secure the integrity of the resolution process.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{132} CONFIDENTIALITY

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

**David M. Schizer**, *Litigation & Professional Responsibility: Is Overlawyering Overtaking Democracy?*, 21 GEO. J. LEGAL ETHICS 1433 (2008).

The author addresses the tort system generally and the perceptions of “overlawyering.” He discusses whether national or dramatic state reform is needed and cites arbitration clauses as near-ubiquitous in various types of consumer contracts.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Amy J. Schmitz**, *Curing Consumer Warranty Woes Through Regulated Arbitration*, 23 OHIO ST. J. ON DISP. RESOL. 627 (2008).

Incorporating the “shoulds” of the 1998 Consumer Due Process Protocol should be a legislative priority for addressing current fairness concerns in consumer arbitration, especially in Magnuson Moss Warranty Act disputes. Legislative “musts” would have to survive Federal Arbitration Act preemption challenges, and provide clear procedural protections that would balance efficiency and fairness concerns.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{144} LEGISLATION

**Amy J. Schmitz**, *Ethical Considerations in Drafting and Enforcing Consumer Arbitration Clauses*, 49 S. TEX. L. REV. 841 (2008).

Corporations put one-sided arbitration clauses in adhesion contracts with consumers who have little bargaining power. This article discusses the ethical problems with drafting such clauses and why courts generally enforce them.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{138} ETHICS: GENERAL

**Ted Schneyer**, *The Organized Bar and the Collaborative Law Movement: A Study in Professional Change*, 50 ARIZ. L. REV. 289 (2008).

Collaborative law (CL) is a dispute resolution process that relies on negotiation and puts aside the prospect of litigation. This article explains the emergence and evolution of the CL movement. It then reviews the mainstream legal community's responses to the CL movement. The article then argues that CL will not gain broad acceptance until an ethical or regulatory structure is established for it.

{53} COLLABORATIVE LAW—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{151} ROLE OF LAWYERS

**Charity Scott**, *Doctors as Advocates, Lawyers as Healers*, 29 HAMLINE J. PUB. L. & POL'Y 331 (2008).

This essay explores counterintuitive propositions to see what they may add to our understanding of the role of doctors and lawyers in health care conflict resolution. Specifically, it discusses how the concept of fiduciary duty may unsettle our conventional views of doctors as healers and lawyers as advocates. The article explores whether viewing doctors as advocates and lawyers as healers, consistent with our core understandings of the professional and ethical responsibilities of practitioners in each profession, might improve the prospects for conflict resolution in health care.

{60} ADR—GENERAL

{89} SUBJ MATTER: HOSPITALS

{138} ETHICS: GENERAL

**Derek Scott**, Comment, *The Zen of Arbitration: Contracting for Judicial Review of Arbitration Awards*, 29 WHITTIER L. REV. 743 (2008).

The comment examines the scope of arbitration and the Supreme Court's impending decision in *Hall Street Associates, L.L.C. v. Mattel Inc.* and addresses the fundamental differences in how the Third and Ninth Circuit

Courts view arbitration. The article provides a comparative analysis of judicial deference to arbitration results.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Christina Semmer**, Note, *The “Knowing and Voluntary” Standard: Is the Sixth Circuit’s Test Enough to Level the Playing Field in Mandatory Employment Arbitration?*, 2008 J. DISP. RESOL. 607 (2008).

This note discusses the “knowing and voluntary” standard used in the Sixth Circuit, especially in *Seawright* with respect to employment arbitration agreements. The author concludes that the case does not fully touch upon the “voluntary” aspect of the standard and suggests that other courts should do so by defining the standard.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{147} POWER IMBALANCE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Omer Shapira**, *Joining Forces in Search for Answers: The Use of Therapeutic Jurisprudence in the Realm of Mediation Ethics*, 8 PEPP. DISP. RESOL. L. J. 243 (2008).

Therapeutic Jurisprudence’s (TJ) effect on mediation is two-fold. Recognizing therapeutic values and utilizing them with ethics in mediation can lead to a better practice of mediation. Also, TJ supports the autonomy that drives mediation and makes it a unique alternative to litigation. TJ helps enhance the psychological well-being of parties in mediation which helps improve the overall effectiveness and viability of the process.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

**Sarah Noel Sheffield**, Comment, *“Celebritysquattin’”: The Ubiquity of Celebrity Culture and the Unique Problem It Presents for Domain Name Ownership*, 15 VILL. SPORTS & ENT. L.J. 409 (2008).

This comment discusses the inherent problems with mediation and litigation when celebrities attempt to claim internet domain names. It offers various suggestions to make these techniques more effective.

{21} MEDIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{123} SETTLEMENT: PRESSURES TO SETTLE

## {134} DISPUTE PREVENTION

**David M. Shelton**, *Keeping End-of-Life Decisions Away from Courts After Thirty Years of Failure: Bioethical Mediation as an Alternative for Resolving End-of-Life Disputes*, 31 HAMLINE L. REV. 103 (2008).

Mediation may provide the most effective means of resolving end-of-life disputes. This article provides background information regarding previous judicial attempts at resolving end-of-life disputes, examines the interests that the parties involved may value when considering the termination of life-sustaining treatment, addresses some of the bioethical concerns surrounding the decision to terminate life-sustaining treatment, and proposes that parties attempt to resolve end-of-life disputes using a neutral mediator who is trained in bioethics prior to, or in lieu of, entering the litigation system.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{138} ETHICS: GENERAL

**Robert O. Sheridan**, Note, *Almost Quiet on the Expanded Review Front: Supreme Court Rejects Expansion of Judicial Review of Arbitration Awards*, 13 SUFFOLK J. TRIAL & APP. ADVOC. 93 (2008).

In *Hall Street Associates v. Mattel*, the United States Supreme Court held that the provisions of the Federal Arbitration Act are exclusive and cannot be expanded through contractual agreement. The author argues that state courts and legislatures ought to recognize the wisdom of the *Hall Street* Court and eliminate Expanded Review in those jurisdictions which still sanction the doctrine.

44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Donna Shestowsky**, *Disputants' Preferences for Court-Connected Dispute Resolution Procedures: Why We Should Care and Why We Know So Little*, 23 OHIO ST. J. ON DISP. RESOL. 549 (2008).

Courts should design a dispute system that is more responsive to the preferences of disputants. The first section of this article argues that party autonomy should be a fundamental value of any ADR program. The second section analyzes dispute systems and notes the flexibility courts have in developing ADR programs. The final section synthesizes past research and suggests focusing on party preferences not only promotes autonomy, but promotes court efficiency and related institutional goals.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

## {133} COURT REFORMS

**Kami Simmons**, *Criminal Law: The Politics of Policing: Ensuring Stakeholder Collaborations in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489 (2008).

The United State Department of Justice currently uses a strategy to negotiate reform of local law enforcement agencies that excludes important stakeholders. The article argues that the exclusion undermines the legitimacy of reforms and advocates that the DOJ adopt the regulatory negotiation model to police reform.

{1} NEGOTIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

{144} LEGISLATION

**Ahmad Slaibi & Ian J. Silverbrand**, *Efficiency and Equity in the Distribution of Renewable Resources: Water Allocation in the Jordan River Watershed*, 26 VA. ENVTL. L.J. 655 (2008).

This essay proposes a law and economics framework that will assist countries that share natural resources in reaching agreements on how to share and allocate those resources. The essay focuses primarily on the allocation of the Jordan River Watershed's resources.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{84} SUBJ MATTER: ENVIRONMENT

**Robert Sprague & Karen L. Page**, *The Private Securities Litigation Reform Act and the Entrepreneur: Protecting Naïve Issuers from Sophisticated Investors*, 8 WYO. L. REV. 167 (2008).

This article examines what effect the protection of naïve issuers is on entrepreneurs. It discusses personal and resource-based attributes of entrepreneurs that can enhance their power when negotiating the terms of investments in their companies.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{147} POWER IMBALANCE

**Theodore J. St. Antoine**, *Mandatory Arbitration: Why It's Better than It Looks*, 41 U. MICH. J.L. REFORM 783 (2008).

This article examines the practical and theoretical pros and cons of mandatory arbitration in employment disputes. The author posits that mandatory arbitration in actual practice is not detrimental to employees and

that, for most lower-paid workers, it may constitute their only option in terms of vindicating their contractual and statutory rights. The author further argues that lower-paid employees have had respectable success rates in arbitration, however, ensuring due process remains a challenge.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

**Jesse D. Steele**, *Negotiating with Deity: Strategies and Influences Related to Recent North Korean Negotiating Behavior*, 9 PEPP. DISP. RESOL. L.J. 119 (2008).

This article discusses the Korean nuclear weapons crisis and negotiation strategies, behaviors, and tactics used by the parties involved. Moreover, it discusses the behavior of Kim Jong-Il and how he may have affected the negotiating behavior of North Korea.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

**Jeffrey W. Stempel**, *Mandating Minimum Quality in Mass Arbitration*, 76 U. CIN. L. REV. 383 (2008).

This article assess the arbitration of securities and investment claims and the modern world of “new” or “mass” standardized arbitration that has emerged after the Supreme Court’s pro-arbitration jurisprudence. This article advocates government-mandated imposition of procedural and substantive ground rules to ensure the fair and effective operation of “new” or “mass” arbitration and proposes mandated minimum procedural and substantive requirements to correct problems brought on by inadequate oversight of mass arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

{146} ORGANIZATION POLICIES & RULES

**Mark Stephens**, Note, *Losing Lift and Creating Drag! The Effect of National Mediation Board Execution and Railway Labor Act Court Decisions on the Collective Bargaining Process in the Airline Industry: A Union Perspective*, 15 TEX. WESLEYAN L. REV. 141 (2008).

This article discusses the importance of creative mediation techniques in minimizing delay tactics and encouraging more productive bargaining in the airline industry.

- {21} MEDIATION—GENERAL
- {104} SUBJ MATTER: REGULATORY
- {128} REQUIREMENTS: STATUTORY OR RULES
- {144} LEGISLATION

**Adam Stephenson**, Note, *A View of the Future in Semiconductor Process: Patent Prosecution in Class 438 Under the United States Patent and Trademark Office's Final Claims and Continuations Rules*, 8 WAKE FOREST INTELL. PROP. L.J. 272 (2008).

This note suggests that within the negotiation of patent prosecutions, alternative dispute resolution principles should apply under the PTO's new rules.

- {1} NEGOTIATION—GENERAL
- {105} SUBJ MATTER: SCIENCE & TECHNOLOGY
- {123} SETTLEMENT: PRESSURES TO SETTLE

**Jean R. Sternlight & Jennifer Robbennolt**, *Good Lawyers Should Be Good Psychologists: Insights for Interviewing and Counseling Clients*, 23 OHIO ST. J. ON DISP. RESOL. 437 (2008).

The study of relevant psychology is essential for lawyers to improve their client interviewing skills. The lawyer not only gathers information during a client interview, but she builds rapport with the client and counsels them on the legal issues and options. Part II of the article overviews a "typical" lawyer's interviewing skills. Part III of the article reviews pertinent areas in psychology. Part IV explains how these areas can improve legal interviewing and counseling.

- {60} ADR—GENERAL
- {73} SUBJ MATTER: GENERAL
- {149} QUALITY CONTROL

**Erik Stock**, Note, *"We Were All Born on It. And Some of Us Was Killed on It": Adopting a Transformative Model in Eminent Domain Mediation*, 23 OHIO ST. J. ON DISP. RESOL. 687 (2008).

While some eminent domain disputes challenge the government's right to seize a piece of property, many focus on the government's valuation of the property. Using transformative mediation helps resolve valuation questions in a consensus building matter. There is a risk that mediation outcomes might be influenced by the power imbalance between the government and homeowner parties, and any system must be designed with the goal of minimizing such a risk.

- {21} MEDIATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY

{147} POWER IMBALANCE

{133} COURT REFORMS

**S.I. Strong**, *Enforcing Class Arbitration in the International Sphere: Due Process and Public Policy Concerns*, 30 U. PA. J. INT'L L. 1 (2008).

Overview of class arbitration in the US and abroad. The author argues that international class arbitration awards should be given the same respect as other types of arbitration.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Arsalan M. Suleman**, *Bargaining in the Shadow of Violence: The NPT, IAEA, and Nuclear Non-Proliferation Negotiations*, 26 BERKELEY J. INT'L L. 206 (2008).

This article assesses the impact of the Nuclear Non-Proliferation Treaty on nuclear disarmament negotiations. It reviews applicable dispute system designs, the non-proliferation dispute system, and application of the later to North Korea, Iran and Pakistan.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

**Adam J. Sulkowski**, *Through the Looking Glass: What a Comparison with the New Polish Legal Framework of Arbitration Reveals About the U.S. Legal Framework of Arbitration*, 7 WASH. U. GLOBAL STUD. L. REV. 87 (2008).

In comparing Poland's judicial review of arbitration decisions with that of the United States, the article argues that the American system lends too much deference to arbitrators' decisions that may impinge both procedural and substantive due process of parties. The article concludes that American arbitration laws are in need of reform as arbitration's application in certain situations has become illogical.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

**Gill Marvel P. Tabucanon et al.**, *Philippine Community Mediation, Katarungang Pambarangay*, 2008 J. DISP. RESOL. 501 (2008).

Provides an overview of a type of mediation utilized in the Philippines called "Katarungang Pambarangay."

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L



{125} COMPARISONS: HISTORICAL  
{155} TEACHING

**Pauline H. Tesler**, *Collaborative Family Law, the New Lawyer, and Deep Resolution of Divorce-Related Conflicts*, 2008 J. DISP. RESOL. 83 (2008).

While exploring collaborative law and interdisciplinary team collaborative divorce practice in the field of family law, this article reflects on what these processes offer to clients and what affect the practice of these processes has on lawyers.

{53} COLLABORATIVE LAW—GENERAL  
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)  
{151} ROLE OF LAWYERS

**Fran L. Tetunic**, *Mediation Myths and Urban Legends*, 82 FLA. B.J. 52 (2008).

This article gives a general overview of mediation techniques and procedures utilized in the Florida Court System. Tetunic first highlights the significant changes in mediation law and ethical rules over the past four years in Florida and then explains their general importance. Specifically, the importance of a lawyer's duty to keep abreast of mediation developments is discussed. Overall, the article seeks to give an overview of the purpose, usage, rules, and techniques of mediation when used to resolve disputes.

{21} MEDIATION—GENERAL  
{73} SUBJ MATTER: GENERAL  
{104} SUBJ MATTER: REGULATORY  
{128} REQUIREMENTS: STATUTORY OR RULES

**Amie Thompson**, *Recent Development, Courts May Vacate Grievance Arbitration Awards When Contrary to Public Policy: Westmoreland Intermediate Unit No. 7 v. Westmoreland Intermediate Unit No. 7 Classroom Assistants Educational Support Pers. Ass.*, 11 DUQ. BUS. L.J. 109 (2008).

This Casenote reviews *Westmoreland Intermediate Unit No. 7 v. Westmoreland Intermediate Unit No. 7 Classroom Assistants Educational Support Personal Association* where Pennsylvania held that the essence test is applicable to grievance arbitration awards under the Public Employee Relations Act.

{44} ARBITRATION—GENERAL  
{93} SUBJ MATTER: LABOR—GENERAL  
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Leon Trakman**, *Ex Aequo et Bono: Demystifying an Ancient Concept*, 8 CHI. J. INT'L L. 621 (2008).

There generally has been a negative connotation associated with the concept of ex aequo et bono. This article argues that the concept is actually valuable, and discusses how it may be revitalized in both international and domestic law.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

**Sarah Tran**, Note, *Experienced Intellectual Property Mediators: Increasingly Attractive in Times of "Patent" Unpredictability*, 13 HARV. NEGOT. L. REV. 313 (2008).

This article discusses the benefits from mediating patent disputes. Mediating patent disputes provides the parties with an objective view on how the court would treat the claim from a mediator with specialized knowledge of patent law while bypassing a steep learning curve for jurors and judges unfamiliar with patent law. Reliance upon specialized mediators may eliminate the unpredictable results that occur in patent litigation.

{21} MEDIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{136} ECONOMIC ADVANTAGES OF ADR

{133} COURT REFORMS

**Paul Trapani**, Comment, *Old Presumptions Never Die: Rethinking the Steelworkers Trilogy's Presumption of Arbitration in Deciding the Arbitrability of Side Letters*, 83 TUL. L. REV. 559 (2008).

This article discusses the presumption for labor arbitration set-out by the Supreme Court in the Steelworkers Trilogy of cases. The article discusses how the labor environment has changed since these cases were decided and suggests a new presumption.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

**David M. Tressler**, *The Soldier and the Sheik: Lessons from Negotiating in Iraq*, 13 HARV. NEGOT. L. REV. 67 (2008).

This article discusses negotiation in the context of the American military's mission in Iraq. The author suggests several negotiation tactics and techniques that may enhance the effectiveness of U.S. negotiation with local civilian or military leaders in Stability, Security, Transition, and Reconstructions (SSTR) missions.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L  
 {87} SUBJ MATTER: GOV'T  
 {124} COMPARISONS: CROSS-CULTURAL

**Andrew Tuck**, *The Finality Question: Appellate Rights and Review of Arbitral Awards in the Americas*, 14 LAW & BUS. REV. AM 569 (2008).

This article is a comparative analysis of Appellate Rights utilized for conducting international arbitrations within the Americas. The article looks at United States, Mexico and Chile.

{44} ARBITRATION—GENERAL  
 {92} SUBJ MATTER: INT'L

**Marcus M. Van Wey**, *Recent Development, Community State Bank v. Strong*, 23 OHIO ST. J. ON DISP. RESOL. 429 (2008).

The Eleventh Circuit's ruling in *Community State Bank v. Strong* held that a federal court could exercise subject matter jurisdiction over a petition to compel arbitration if the underlying dispute touches on a federal question. This ruling creates a potential means for out-of-court lenders to use the Federal Arbitration Act to side-step usury laws, and it deepens a present circuit split.

{44} ARBITRATION—GENERAL  
 {79} SUBJ MATTER: CONSUMER  
 {128} REQUIREMENTS: STATUTORY OR RULES

**Vanessa Vogl**, *Congress Giveth, and Congress Taketh Away: How the Arbitration and Mediation Clauses Jeopardize the Rights Granted to Immigrant Farmworkers by AgJOBS*, 29 HAMLINE J. PUB. L. & POL'Y 463 (2008).

This article considers the great importance of the rights granted to farmworkers by AgJOBS, and then discusses the insufficiency of the arbitration and mediation clauses with which the bill purports to enforce these rights. It then provides an employment law framework for considering AgJOBS by discussing and critiquing the termination at-will doctrine versus just-cause termination, and the alternative dispute resolution processes by which employment disputes are settled.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL  
 {93} SUBJ MATTER: LABOR—GENERAL  
 {123} SETTLEMENT: PRESSURES TO SETTLE  
 {147} POWER IMBALANCE

**Maria R. Volpe**, *Taking Stock: ADR Responses in Post-Disaster Situations*, 9 CARDOZO J. CONFLICT RESOL. 381 (2008).

Professor Volpe asks what role dispute resolvers play in post- disaster scenarios. She examines the dispute resolution methods that have been used and what can be learned from those situations. She concludes by expressing that ADR needs to be further developed so that it can provide viable assistance during disaster situations.

{60} ADR—GENERAL

{87} SUBJ MATTER: GOV'T

**George K. Walker**, *Family Law Arbitration: Legislation and Trends*, 21 J. AM. ACAD. MATRIM. LAW. 521 (2008).

Argues for the use of the Model Family Law Arbitration Act drafted by the American Academy of Matrimonial Lawyers as a model act for state legislation.

{44} ARBITRATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{144} LEGISLATION

**David T. Wang**, Comment, *Judicial Reform in China: Improving Arbitration Award Enforcement by Establishing a Federal Court System*, 48 SANTA CLARA L. REV. 681 (2008).

This article uses a cultural and historical perspective to examine the difficulties of arbitration award enforcement in China. Specifically, a weak judiciary and lack of a federal court system are blamed. The author gives suggestions for how to fix China's arbitration issues.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{133} COURT REFORMS

**Stephen J. Ware**, *What Makes Securities Arbitration Different from Other Consumer and Employment Arbitration*, 76 U. CIN. L. REV. 447 (2008).

There are similarities between securities arbitration and adhesive arbitration, such as consumer and employment arbitration. This article discusses how securities arbitration differs from other types of adhesive arbitration. The author emphasizes what makes consumer and employment arbitration in the securities industry different from consumer and employment arbitration generally.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Stu Webb**, Note, *Collaborative Law: A Practitioner's Perspective on Its History and Current Practice*, 21 J. AM. ACAD. MATRIM. LAW. 155 (2008).

This article offers the author's personal recollection of the creation and development of collaborative law. Collaborative law is defined by the author as a method of practicing law in which attorneys assist their clients in resolving conflict and making agreements using cooperative strategies rather than litigation.

{53} COLLABORATIVE LAW—GENERAL

{73} SUBJ MATTER: GENERAL

{134} DISPUTE PREVENTION

**W. Mark C. Weidemaier**, *From Court-Surrogate to Regulatory Tool: Re-Framing the Empirical Study of Employment Arbitration*, 41 U. MICH. J.L. REFORM 843 (2008).

Weidemaier identifies and discusses empirical research surrounding the use of arbitration to resolve employment disputes. In doing so he points to the failure to take account of "filtering" mechanisms in outcome research as an explanation of the difficulty in assessing the relative fairness of arbitration and litigation. Thus, Weidemaier argues for a conceptual shift acknowledging arbitration not only a court surrogate but also as part of an employer-structured regulatory process.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{79} SUBJ MATTER: CONSUMER

**David C. Weiss**, *How Terrell Owens, Collective Bargaining, and Forfeiture Restrictions Created a Moral Hazard that Caused the NFL Crime Wave and What It Meant for Michael Vick*, 15 SPORTS LAW. J. 279 (2008).

The article claims that after Terrell Owens lost his grievance in 2005, the National Football League Players Association (NFLPA) won discipline and salary forfeiture amendments to the NFL's Collective Bargaining Agreement (CBA) that reversed years of NFL arbitration precedent. The article further describes the basic structure of the CBA and the NFL Player Contract, detailing arbitrations preceding the 2006 CBA.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{121} SETTLEMENT: AUTHORITY

{138} ETHICS: GENERAL

**Matthew Wendlandt**, Comment, *SGS v. Philippines and the Role of ICSID Tribunals in Investor-State Contract Disputes*, 43 TEX. INT'L L.J. 523 (2008).

With the increase of bilateral investment treaties (BIT), there have been more disputes being arbitrated in front of the International Center for the

Settlement of Investment Disputes (ICSID). Originally, countries made contracts with forum selection clauses specifically choosing the ICSID to arbitrate. This comment argues that the ICSID has jurisdiction over BITs even without such a forum selection clause.

{44} ARBITRATION—GENERAL  
 {92} SUBJ MATTER: INT'L  
 {124} COMPARISONS: CROSS-CULTURAL  
 {146} ORGANIZATION POLICIES & RULES

**Christopher A. Whytock**, *Litigation, Arbitration, and the Transnational Shadow of the Law*, 18 DUKE J. COMP. & INT'L L. 449 (2008).

This article focuses on the governance implications of both international arbitration and litigation and how different forms of governance have distinct effects on the behavior of transnational actors. The author utilizes the “shadow of the law” metaphor to explore transnational judicial governance and transnational private governance, as well as to explore the complex relationship between transnational judicial governance and transnational arbitration.

{44} ARBITRATION—GENERAL  
 {92} SUBJ MATTER: INT'L  
 {125} COMPARISONS: HISTORICAL

**Tess Wilkinson-Ryan & Deborah Small**, *Negotiating Divorce: Gender and Behavioral Economic of Divorce Bargaining*, 26 LAW & INEQ. 109 (2008).

This article looks at trends in family law while analyzing the psychology of gender and how it relates to each trend within the context of divorce.

{1} NEGOTIATION—GENERAL  
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

**Roger Wise**, *Seven Elements of an Effective Mediator*, 10 No. 14 LAWYERS J. 6 (2008).

This article is about the seven elements that make a good mediator. The seven elements are: training, pre-mediation conferences, opening session, private meetings, never calling an impasse, refraining from giving opinions, and putting the agreement in writing.

{21} MEDIATION—GENERAL  
 {73} SUBJ MATTER: GENERAL

**Nathan Witkin**, Note, *Interest Group Mediation: A Mechanism for Controlling and Improving Congressional Lobbying Practices*, 23 OHIO ST. J. ON DISP. RESOL. 373 (2008).

Congress has the potential to promote consensus-based policy making and reform lobbying practices by requiring conflicting interest groups to enter

mediation before they may engage in lobbying efforts. This note focuses on the problems created by the current lobbying culture in Washington, D.C., and suggests interest group mediation as a mechanism to reform the lobbying culture and promote collaboration in policy making.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{144} LEGISLATION

**Catherine Woltering**, Recent Development, *Jack Ehleiter v. Grapetree Shores, Inc.*, 23 OHIO ST. J. ON DISP. RESOL. 753 (2008).

In *Jack Ehleiter v. Grapetree Shores, Inc.*, the Third Circuit held that courts, not arbitrators, decide the question of arbitration waiver. This has deepened the circuit split: the First and Third Circuits have held it is a question for the courts, and the Eighth has held it is a matter to be resolved by the arbitrator.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Brooke E. Wright**, Note, *Bound to Arbitrate: The Fifth Circuit Considers an Arbitration Agreement in a Settlement for Maintenance and Cure*, 32 TUL. MAR. L.J. 619 (2008).

At issue is *Terrebonne v. K-Sea Transp. Corp.* and the 5th Circuit's enforcement of settlement agreements. Specifically, the court enforced an agreement relating to maintenance and cure in an employment contract containing an arbitration agreement. The court held that the arbitration agreement was not voided by the Jones Act.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Nina Yadava**, Note, *Can You Hear Me Now? The Courts Send a Stronger Signal Regarding Arbitration Class Action Waivers in Consumer Telecommunications Contracts*, 41 COLUM. J.L. & SOC. PROBS. 547 (2008).

This note discusses class action waivers in mandatory arbitration agreements between consumers and telecommunication companies and the inconsistent treatment by courts of such waivers.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Bruce Yandle et al.**, *Bootleggers, Baptists & Televangelists: Regulating Tobacco by Litigation*, 2008 U. ILL. L. REV. 1225 (2008).

The author describes the history of unsuccessful attempts by the government to regulate the tobacco industry. Particularly, author describes the 1998 Master Settlement Agreement, and what problems with their negotiations prevented the parties from making a more efficient agreement.

{1} NEGOTIATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{123} SETTLEMENT: PRESSURES TO SETTLE

**Ernest A. Young**, *Supranational Rulings as Judgments and Precedents*, 18 DUKE J. COMP. & INT'L L. 477 (2008).

This article posits that disparity between receptivity to transnational arbitral awards and decisions from international courts is based on a sensible distinction—arbitral awards are only judgments of individual situations, while decisions of international tribunals create precedent that domestic actors are skeptical of following. The author rejects the distinction as being one between public and private cases and focuses on the distinction as one between judgments and precedents.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Paula M. Young**, *A Connecticut Mediator in a Kangaroo Court?: Successfully Communicating the "Authorized Practice of Mediation" Paradigm to "Unauthorized Practice of Law" Disciplinary Bodies*, 49 S. TEX. L. REV. 1047 (2008).

This article examines a court ruling for \$6,000 in disciplinary action against a non-attorney practicing mediation for unauthorized practice of law. The article concludes that non-attorney was not engaged in the practice of law and was acting within the ethical guidelines of all mediators, thus the ruling was improper.

{21} MEDIATION—GENERAL

{99} SUBJ MATTER: OTHER PROF MALPRACTICE

{114} 3D PARTY: PRACTICE OF LAW

{138} ETHICS: GENERAL

**Gabriella L. Zborovsky**, Note, *Baby Steps to "Grown-Up" Divorce: The Introduction of the Collaborative Family Law Center and the Continued Need for True No-Fault Divorce in New York*, 10 CARDOZO J. CONFLICT RESOL. 305 (2008).



When it comes to grounds for divorce, New York continues to operate primarily as a fault-based system. The author argues that the introduction of collaborative law will have little practical effect unless combined with the adoption of a no-fault provision by the New York Legislature.

{53} COLLABORATIVE LAW—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{133} COURT REFORMS

**Mandy Zhang**, Note, *To Certify, or Not to Certify: A Comparison of Australia and the U.S. in Achieving National Mediator Certification*, 8 PEPP. DISP. RESOL. L. J. 307 (2008).

This article offers comparison of the mediation landscape between the United States and Australia. The article looks into how both countries began to explore the possibility of mediator accreditation, explores the different programs both countries proposed, why the U.S. has failed to implement a system so far, how Australia implemented a system and is moving forward, and why the U.S. should continue to push for an accreditation program.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{149} QUALITY CONTROL

**Bridget B. Zoltowski**, Note, *Restoring Investor Confidence: Providing Uniformity in Securities Arbitration by Offering Guidelines for Arbitrators in Deciding Motions to Dismiss Before a Hearing on the Merits*, 58 SYRACUSE L. REV. 375 (2008).

The Financial Industry Regulatory Authority (FINRA) resolves nearly all disputes between brokers and investors through arbitration. This note argues that FINRA should be more regulated in order to ensure uniformity in the decisions of disputes that come before it.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{146} ORGANIZATION POLICIES & RULES

{144} LEGISLATION

